

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

76-7176

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In The
United States Court of Appeals
For The Second Circuit

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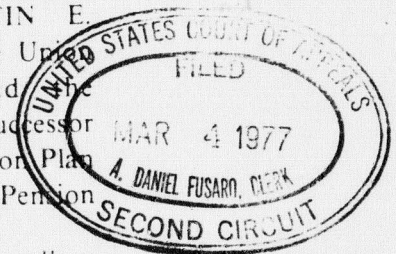
ANDY DINKO individually and on behalf of the members of
the National Maritime Union of America,

Plaintiff-Appellant,

vs.

SHANNON J. WALL, as President of the National Maritime Union of America and individually, JOSEPH CURRAN, as past President of the National Maritime Union of America and individually, MEL BARISIC, as Secretary-Treasurer of the National Maritime Union of America and individually, PETER BOCKER, JAMES MARTIN and RICK MILLER, as Vice Presidents of the National Maritime Union of America and individually, ANDREW RICH, as New York Branch Agent of the National Maritime Union of America, ABRAHAM E. FREEDMAN, LEON KARCHMER and MARTIN E. SEGAL, as former Trustees of the National Maritime Union Officers' Pension Plan and individually, and the AMALGAMATED BANK OF NEW YORK, as Successor Trustee of the National Maritime Union Officers' Pension Plan and Trustee for the National Maritime Union Staff Pension Plan,

Defendants-Appellees.



BRIEF FOR PLAINTIFF-APPELLANT

ANDY DINKO, Pro se

109-08 Firewood Place,

Queens, New York 11412

(212) 454-4338

TABLE OF CONTENTS

Statement of Issues Presented For Review .	
Statement of the Case	
Argument:	

Point	Plaintiff had made an adequate showing of good cause, and the Court below erred in dismissing the complaint without a hearing or trial of the allegations.
Conclusion	

TABLE OF CITATIONS

Cases Cited:

Addison v. Grand Lodge of Int'l. Ass'n. of Machinists, 318 F.2d 504 (9th Cir. 1963)	
Aho v. Bintz, 290 F. Supp. 577 (D. Minn. 1968)	

Contents

Executive Bd. v. International Bhd. of Elec. Workers, 184 F. Supp. 649 (D. Maryland 1960)	
Giordani v. Hoffman, 277 F. Supp. 722 (E.D. Penn. 1967)	
Gurton v. Arons, 339 F.2d 371 (2d Cir. 1964)	
Horner v. Ferron, 362 F.2d 224 (9th Cir.), cert. denied, 385 U.S. 958 (1966) .	
International Bhd. of Teamsters, etc. v. Hoffa, 242 F. Supp. 246 (D.D.C. 1965) .	
Morrissey et. al. v. Curran, Wall, Perry, et. al., 69 Civ. 442 (S.D.N.Y. 1972) . .	
113 (W 204) (S.D.N.Y. 1961)	
Penuelas v. Moreno, 198 F. Supp. 441 (S.D. Calif. 1961)	

Contents

Philips v. Osborne, 403 F.2d 826 (9th Cir. 1968)

Purcell v. Keane, 406 F.2d 1195 (3rd Cir. 1969)

Sabolsky v. Budzanoski, 457 F.2d 1245 (3rd Cir.), cert. denied, 409 U.S. 853 (1972)

Wimbush v. Curran, 356 F. Supp. 316 (S.D.N.Y. 1973)

Levinson v. Perry
Statute Cited:

Title 29, United States Code:

Section 501

Section 501(b)

Rules Cited:

Federal Rules of Civil Procedure:

Rule 12(b)

Rule 12(b)(1)

Contents

Other Authority Cited:

Interim Report of the Select Committee on
Improper Activities in the Labor Man-
agement Field, S. Rep. No. 1417, 85th
Cong., 2d Sess. (1958)

76-7176

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ANDY DINKO individually and on behalf of
the members of the National Maritime Union
of America,

Plaintiff-Appellant,

-against-

75 Civ. 524

SHANNON J. WALL, as President of the
National Maritime Union of America and
individually, JOSEPH CURRAN, as past
President of the National Maritime Union
of America and individually, MEL BARISIC,
as Secretary-Treasurer of the National
Maritime Union of America and individually,
PETER BOCKER, JAMES MARTIN and RICK MILLER,
as Vice Presidents of the National Maritime
Union of America and individually, ANDREW
RICH, as New York Branch Agent of the
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FREEDMAN, LEON KARCHMER and MARTIN E. SEGAL,
as former Trustees of the National Maritime
Union Officers' Pension Plan and individually,
and the AMALGAMATED BANK OF NEW YORK, as Suc-
cessor Trustee of the National Maritime Union
Officers' Pension Plan and Trustee for the
National Maritime Union Staff Pension Plan,

Defendants-Appellees.

BRIEF FOR PLAINTIFF-APPELLANT

STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Should the order granting leave to commence this action this action upon a finding of "good cause" shown be vacated before a pre-trial discovery by plaintiff on grounds of hearsay and on information and belief after ordering plaintiff to submit to a deposition by Defendants?

B. Did the District Court followed the instructions and fully complied with the Appeals Court decision, or was the true meaning ignored mistakenly?

C. Did plaintiff make an adequate showing of "good cause" on the face of his verified applications, affidavit in support thereof with attached exhibits, and the complaint?

D. Should the order granting leave to commence this action upon a finding of "good cause" shown, have been vacated without a hearing or a trial of the allegations?

E. Is the Court reliance on the unsigned, un-notarized, unverified court ordered Dinko deposition of 4/22/75 taken while under doctor's sedation, is in error?

STATEMENT OF THE CASE

The plaintiff-appellant Andy Dinko brought this action individually and on behalf of the members of the National Maritime Union of America (hereinafter referred to as "the NMU"), under the Labor-Management Reporting and Disclosure Act, (hereinafter referred to as "the LMRDA"), Title 29, United States Code, Section 501. The complaint alleges that the defendants-appellees Wall, Curran, Barisic, Bocker, Martin, Miller and Rich have violated their fidu-

clery and statutory duties within the meaning and intent of the LMRDA by, inter alia, misappropriating union funds, refusing to make certain financial, membership and NMU pension plan data available to plaintiff and other NMU members in good standing, and manipulating the revision and adoption of NMU officers' and staff pension plans.

Defendants moved for an order pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure (Fed. R. Civ. P.), dismissing the complaint on the ground that the Court lacked jurisdiction over the subject matter of the action. On August 13, 1975, judgment was entered dismissing the complaint on the order of the Court below, which vacated the prior order granting leave to commence the action and granted defendants' motion.

On December 17, 1974, plaintiff wrote defendants Barisic and Wall demanding that the defendants declare void a vote taken on a recent proposed revision of an NMU officers' pension plan. Plaintiff detailed the basis for his demand, and claimed that such vote was conducted in violation of the NMU Constitution and the Landrum Griffin Act. Further, plaintiff demanded an accounting of all NMU expenditures in connection with this officers' pension plan and of the benefits paid NMU officers and staff there-

under. He further demanded an independent audit of all NMU expenditures, the establishment of a "Membership Watch Dog Committee" to protect the membership from the "continuous misappropriation" of union funds, and the halt to further expenditure of union funds for payment of benefits under these officer and staff pension plans. Suit was urged and then threatened if the NMU governing board or officers ignored plaintiff's requests and demands.

Following the defendants' failure to bring suit to recover damages, or to secure an accounting or take any other appropriate relief as demanded, plaintiff moved ex parte and pursuant to Section 501(b) of the LMRDA upon verified application for leave of the Court to sue the defendants in the United States District Court for the Southern District of New York. By order of Judge Marvin E. Frankel, dated January 27, 1975, plaintiff was granted leave to commence this proceeding; the Court having found that plaintiff served demand on the appropriate officers of the NMU demanding action on behalf of the NMU to secure an accounting, recover damages and other appropriate relief, that no action had been taken as a result of plaintiff's demand within a reasonable period of time and that "good

cause" had been shown. Plaintiff's verified application was supported by his affidavit, with annexed exhibits.

With the commencement of this action by the filing and service of a complaint, defendants answered, generally denying plaintiff's allegations. Thereafter defendants began pre-trial discovery by noticing and taking plaintiff's deposition over two sessions, the first on April 15, 1975. Then, on April 21, 1975, the day before the second session, plaintiff was assaulted and beaten while distributing leaflets in the NMU Hall. The following day, while under sedation prescribed by his personal physician, plaintiff completed his deposition.

On April 29, 1975, defendants continued their pre-trial discovery by serving written interrogatories on plaintiff pursuant to Fed. R. Civ. P. 33.

By notice of motion dated May 7, 1975, plaintiff moved for an order disqualifying defendant Abraham E. Freedman as attorney for the defendants Wall, Curran, Barisic, Bocker, Martin, Miller, Rich and Freedman, and enjoining the expenditure of NMU funds for the defense of these defendants. By notice of motion dated May 28, 1975, defendants cross-moved for an order, pursuant to Rule 12(b)(1) of the Fed.

R. Civ. P., dismissing the complaint for lack of subject matter jurisdiction of the action. The grant of the defendants' motion by Judge Henry F. Werker, without prejudice to the plaintiff, is the subject matter of the instant appeal.

The memorandum decision of the Court below, dated August 4, 1975, found that plaintiff had failed to comply with the request requirement prerequisites to suit under Section 501(b) for the following reasons. Firstly, the Court found that plaintiff's letter of December 17th, directed to the officers of the NMU, although intended to bring about action by them, did not request that the officers of the NMU initiate court action to achieve plaintiff's demands. The Court held that under Section 501(b) "a demand must be made by the plaintiff requesting that the union or its governing board or officers take court action to secure the relief" contemplated therein. Therefore, Judge Werker held, plaintiff's demand was an inadequate or insufficient "request requirement." Secondly, the Court found that from reading the plaintiff's deposition, the affidavit of Stanley B. Gruber in support of the Rule 12(b) motion to dismiss and the exhibits annexed to the defendants' motion papers,

an adequate showing of "good cause" had not in fact been made by the plaintiff as required by Section 501(b), and that the ex parte order of Judge Frankel, made upon the submission of a verified application, with exhibits annexed thereto, and plaintiff's affidavit, should accordingly be vacated.

On Appeal the Second Circuit found that Dinko's letter of December 17th, fully complied with and satisfied the requirements of Section 501(b) for suit under the LMRDA., the District Court was therefore REVERSED. On appeal, the Second Circuit Court of Appeals remanded for further proceedings, instructing the district court to articulate the bases for its conclusion that Dinko's application did not show "good cause." Dinko v. Wall, 531 F.2d 68, 76 (2d Cir. 1976). On March 4, 1976, Judge Werker again dismissed the complaint, specifically finding that Dinko did not demonstrate "good cause" as that term had been defined by the Second Circuit in its decision to remand. (531 F.2d at 75.) Dinko filed a notice of appeal pro se. After defendants' moved to require that he post a bond for costs, Dinko applied for leave to proceed in forma pauperis. Dinko's application was opposed by the defendants in an affidavit filed May 28, 1976. The motion was thereafter referred to the Magistrate by Judge Werker to hear and report on the issues of fact regarding Dinko's financial circumstances which had been raised by defendants' Affidavit in Opposition. A hearing was held on August 20, 1976.

AFTER the Forma pauperis was previously granted by the Judge in June, he declared it null and void after receiving an un-meritious affidavit in opposition, which was used as a method to pry into Dinko's union activities, his finances for his anti-management union activities, the source of that finance and if there was continuity, and the source of where the money comes from for paying for fliers. Counsel tried to elicit from Dinko the information regarding an unrelated action for personal injuries sustained by him in the union hall by union officials and other parties due to the instigation of the union officials. The unjustified beating was sustained while exercising his rights as guaranteed under the Bill of Rights (29 U.S.C. 411). Union counsel did not deny that counsel himself has received the summons and complaint in that action and must put in a notice of appearance and answer. It did appear to be more than likely that a desire to identify union dissidents supporting Dinko, and to prepare for other pending litigation may underlie much of defendants' opposition. (See Magistrate's Schreiber Report IO-8-76. p.4) to Dinko's motion.

It bewilders me that the Honorable Judge Werker could fall for such a trap, a farce was played on the court by the union, the court's valuable time was wasted on a fruitless, unfounded affidavit in opposition that did not even refute or disprove anything on Dinko's Affidavit for Forma Pauperis, rather it supported Dinko by admitting that Dinko was un-employed for sometime a fact well supported and known by the union since he was disabled as a result of their negligence and actions. I wondered why I was submitted to such a humiliating ordeal of a hearing where my wife and her family was pried into by the defendants, just on a weightless affidavit that never showed a just cause for a hearing, the only accusation was that of questioning how I can survive in such a state of poverty. The Affidavit was a flimsy attempt to discredit me and a tool used to waste the court's time and money to serve the union officials own personal interest and not justice.

MAGRISTRATE SCHREIBER REPORT 10-8-76 p.3 READS AS FOLLOWS:

Although the extension of leave to proceed in forma pauperis is a judicial determination, the defendants' counsel was given extensive latitude to examine Dinko, as well as Mrs. Dinko, who is not a party to the present action. Moreover, the discretion of the court was unusually extended to permit inquiry into the financial circumstances not only of the Dinkos themselves, but of Mrs. Dinko's parents, (Tr. pp. 66-68; 84-85) who, according to the testimony, are providing financial assistance to the Dinkos. After consideration of the whole record, including particularly testimony elicited from Mrs. Dinko by defendants' counsel himself (Tr. pp. 88-90), regarding the sources and present state of the family's finances and assets, it is my judgment that the questions raised by defendants' Affidavit in Opposition regarding Dinko's eligibility for in forma pauperis privileges are satisfactorily answered.

Accordingly, it is recommended that Dinko's motion for leave to proceed in forma pauperis be granted.

Plaintiff-Appellant submits this brief pro se and begs the indulgence of the Court as to the form but believes the substantive contents and the interest of Justice shall prevail in his cause.

This memorandum is submitted in opposition to the judicial opinion of Justice Henry F. Werker rendered on March 2, 1976. The decision of the United States Court of Appeals for the Second Circuit decided on February 13, 1976 remanded the case to Justice Werker for further proceedings. It was the belief of this Circuit that "good cause" did exist for my complaint against the defendant and that further proceedings, necessarily a hearing, should assist the District Judge in an evaluation of the facts herein. Indeed the Circuit Court elucidated that the ability of the District Court would be enhanced by the benefit of a hearing where "there are numerous allegations in the complaint to which defendants offered a number of varying responses." The Court further stated "the (E.A. 1) factual showing to institute a suit should be no more demanding than that required to defend it against a motion for summary judgment; indeed, it should be somewhat less, since at the earlier stage a plaintiff has not yet had a chance for discovery and a defendant will still have the later protection of a summary judgment motion." It is the plaintiff's contention herein that the recent decision of Judge Werker denying my right to bring this complaint upon a finding of lack of good cause and the complete lack of a hearing to determine those issues falls woefully short of justice and violate the very principles of Section 501 (a) (b) of the LMRDA, 29 U.S.C. Section 501 (a) (b). The pertinent provision of such law provides as follows:

Section 501 (a) of the LMRDA, 29 U.S.C. §501 (a), imposes a fiduciary obligation on the officers, agents, shop stewards and other representatives of a labor organization to hold its money and property solely for the benefit of the organization and its members and to manage, invest and expend this money and property in accordance with the organization's constitution and by-laws. That section provides in its entirety:

"(a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and by-laws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecu-

niary or personal interest which conflicts with the interest of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and by-laws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

Section 501 (b) of the Act affords a vehicle for Union members to bring an action against their officers or representatives who have allegedly violated the fiduciary obligation created by Section 501 (a), and provides as follows:

"b) When any officer, agent, shop steward, or representative of any labor organization is alled to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to

sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. ..."

A brief reading of the minutes of November 25, 1974 regular membership meeting of the National Maritime Union, New York branch, will serve to show the absolute failure of the Union to disclose the financial information of a proposed Staff Pension Plan or permit free discussion thereon. The meeting was convened to foist upon the attending members passage of a plan that affected the economic livelihood of all union members without any compliance with the constitution's requirement of "full" disclosure. The constitution provides as follows:

"Article 4"

MEMBERSHIP APPROVAL

Section 1 -- Principle: All decisions of the National Council, and the National Office between Conventions, which change the established policies, programs, and procedures of the Union must first be approved by the membership before they are made effective.

"Sec.2 -- Method: Membership approval referred to in Section 1 of this Article shall be obtained in the following manner:

(a) The decision of the National Council and/or the National Office shall be spread in full in the NATIONAL MARITIME UNION PILOT or a special newsletter, provided that action on the decision is not required before the PILOT or special newsletter can be published and distributed to the membership. The decision shall then be read at the regular membership meeting in each Branch office operated by the Union, provided that in the event a regular membership meeting is not scheduled within the time necessary for action upon the decision, the decision shall then be read in full at a special membership meeting called for that purpose. After discussion by the membership, action upon the decision shall be taken by vote of the membership present. The approval of a majority of the total members voting in all Branches shall be required in order to make the decision operative."

Chairman Rich at the very meeting wherein a full discussion of the N.M.U. Staff Pension Plan was mandated by the Union Constitution and Section 501 (a) of the L.M.R.D.A., 29 U.S.C., attempted to rubber stamp by a resolution full knowledge of the terms of the plan by his motion, "shall the record show that it has been spread in the Pilot and that the membership is fully aware of it without me reading it into the record?" (Exhibit III, page 19). Section 501 (a) of the LMRDA, 29 U.S.C. § 501a states specifically that:

"A general exculpatory provision in the constitution and by-law of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

It is quite evident to me that Chairman Rich attempted to disavow his constitutional obligation to Union members to fully disclose and read into the record the entire text of the NMU Pension Plans. However, the learned Judge Werker feels that to completely inform the Union members of the provisions of this plan would be a distortion of the meaning of the constitutional requirement that the decision was to be set forth in full. It appears to me that the resolution attempted here was a exculpatory one within the meaning of Section 501a and intentionally intended to violate this statute. I do not understand how a jurist can condone the plain violation of a federal statute in view of the unlawful nature and circumstances in which the Union meeting was conducted. Limited

discussions was permitted by members of the union at this meeting but no adequate, informed or knowledgeable presentation was made, as to how the financial interest of the union members would be affected by the Staff Pension Plan. I categorically deny that anything contained in the Pilot, the Union Newspaper, can adequately answer such questions as:

The Notice did not state the differences between the proposed Staff Pension Plan and the Officers Pension Plan, which it was to replace.

It did not state the basis or formula upon which the benefits to the participants were to be computed.

It did not state such basic considerations as the amount of money to be actually allocated, and the type of benefits (lump sum payments, severance and pension payments) to be received by Union officers and staff under the proposed Plan.

It did not indicate the total funding to be made available from the NMU General Fund for the Plan.

Incredibly, it did not indicate the cost to each member of the benefits to be paid to Union officers and employees under the proposed Plan.

Nor did the Notice indicate that the NMU National Office would, among other things, determine all questions relating to the eligibility of employees to become participants, and compute and certify the amount and kind of benefits payable to participants and their beneficiaries under the Plan.

The NMU Constitution requires "full" disclosure of a National Office decision to change established Union policies, programs

and procedures. Such notice must be in a form understandable to the average Union member, and must include all vital points of the proposed Plan in order to allow and permit the membership to make an informed and intelligent decision on the issue of whether to approve such a decision. The Notice in the NMU Pilot failed to do this.

Neither of the foregoing questions are answered in the full text of the Staff Pension Plan on file in Union Headquarters, which I in my affidavit of support for leave to bring this action, was refused access several times, along with several other Union members who disclosed their identities at risk of their own personal safety.

The questions I ask and the refusal to divulge such information by the Union is in direct violation of their very own Constitution and Federal Law L.M.R.D.A., 29 U.S.C. s 501 (a) (b).

Notice To Court.

I, will like to beg the Court's indulgence at this time on the matter of Exhibits mentioned in this brief, if I, may be permitted to call it as such. The Minutes of the case Morrissey v. NMU, 73 Civ. 204 (S.D.N.Y.) of the Trial Transcripts was unavailable to me in The Records Office, since I could not afford to order or pay for such Transcripts and Minutes, I, have been up to The Judge's Chamber to look at his copy of the Trial Transcripts of 4/19/76 through to 4/21/76. Many excerpts that I quoted was hand written from his., I apologise for this but I had no other recourse. I, ask the Court if it will look at the case in question that I have mentioned. Thank You .

Members were not told at the 11/25/74 meeting that in 1972 a payment was made to Shapiro of \$460,365. for the benefit of the Staff people that was excluded by Court Order Morrissey v NMU 69-442. The membership was not told that that there was already money deposited in the Amalgamated Bank nor did they reveal the amount balanced in the said Account. *Exh. A, B, D.*

At the said meeting in New York on p.20 Exh. III, Raymond Stokes asked:

The point is where is this money coming from to get him a pension when they can't give a seaman pension? where are going to get this money?

WILLIAM MEAKENS ON p.21 Exh.III Attached to the Verified Application, As quote

-----a majority of members here don't know what's going on.

I don't understand what it means the way it is spread in the Pilot.

Chairman Rich never answered the two questions, he recognized six people in the discussions only after he was accused from the floor of soliciting support. He made a lengthy 2 page speech and then said to close discussions. Before this he said on p.21 Exh.III of the Verified Application:

There has been vigorous discussions.

---I think every group and everybody has taken a shot at it.

On p. 19 Rich said to Dinko: referred to as man on the floor:

Wait a minute, see you have your hand up but there are also other people that want to speak also. I see your books.

The Chairman shouted such remarks as follows during the entire discussion in Addresses to the floor:

Jumping up and down is not going to get you the floor.

Brother Jumping up and down was told by the Chairman :

----, There has been vigorous discussion . I have done around the membership.

The chairman then gave up the gavel when there was objections from the floor to the motion to end discussion, he then went into a lengthy speech.

Dinko was never recognized at the meeting except for the Nomination of chairman. At the said meeting on p.24 it is noted that attendance was 532 however the vote count on the same page was a total of 291 votes for Ayes,,nays & abstentions. There is no account for the differential of the numbers but when Dinko said in the EBT there were people at the meeting he never saw before it was called wild and unfounded. There is 241 people unaccounted for, at that meeting in N.Y.

An inspection of all the minutes of the Ports which is in the record will show that about 5-7 ports claimed to have read the spread into the meetings out of a total of about 30 ports/branches. As in N.Y. many other ports violated Article 4

A reading of the San Francisco meeting reveals that John Gribbins asked ABOUT WHERE THE \$350,000. will come from and what it was for.

The Chairman replied : "Just what the hell you think the \$350,000..is for--" Cribbins also asked for a Referendum vote and was threatened to be thrown out.

Judge Werker in his interpretation of Article 4 of the IIMU constitution states in his opinion on p.5 as follows:

"Furthermore, the same section of the Constitution which requires the decision to be spread in full also requires the decision to be read at the meetings at which the membership is to vote on its approval. The Court cannot conceive that it was within the intention of the drafters of the Constitution that the Meeting Chairman must read the plan in its entirety. To interpret the word decision consistently within the paragraph, the court concludes that the published explanation of the substantive changes....., satisfies the requirement that the decision be set forth in full."

In conclusion therefore according to the above interpretation in examining the minutes of all the branches held on II-25-74 (Exhibits 10 through 36 and 40) I must disagree with the judges conclusion that all meetings were held in accordance with Article 4 . I concluded only 5-7 ports may have met the basic

requirement of the Constitution, as is defined by Judge Werker. The great majority of meetings including, the New York, the San Francisco, the Galvesto the Houston, the New Orleans, the Tampa, the Panama, and many other meetings were held in violation of Article 4.,and were invalid and unconstitutional. The vote of said meetings on the Staff Pension Plan was invalid and unconstitut ional.

The vote of the possibly or questionable 5 or 7 meetings that may be counted cannot possibly carry the vote for the Staff Pension Plan to go into effect. The District Court in its own interpretation of Article 4 has erred in dismissing Plaintiff's action for lack of "good Cause".

Wherefore "good cause" has been demonstrated and Plaintiff begs the Court to give him the relief requested.

ISSUE: The Constitutionality of Article 4 on the Membership Approv

The Consitutionality of that part of Article 4 which provides that the "approval of a majority of the total members voting in all Branches shall be requi to make decision operative." This provision violates LMRDA, Title I, Sec. 101(a)(1) and 29U S.C. 411. pertaining to the Bill of Rights. This provision of Article 4 does not provide for the membership on ships out at sea an oppoportunity to vote on important financial matters. Due to the nature of the job many times they do not see the Pilot until it is too late. The provision is a deliberate attempt to disenfranchise such members of their rights to vote, and which it does. There is no provision to protect this block of members that are at sea and cannot be at the Branch or have not seen the issue of the Pilots for sometimes many weeeeks. *Exh. O.*

Article 4 On Membership Approval is violative of U.S.C. 29. and the very principles that the LMRDA was enacted on by the Congress, and the purposes thereof. Seamen as a ward of the Court must be prtected against such actions by the Court.

POINT 11

PLAINTIFF HAD MADE AN ADEQUATE
SHOWING OF GOOD CAUSE, AND THE
COURT BELOW ERRED IN DISMISSING
THE COMPLAINT WITHOUT A HEARING
OR TRIAL OF THE ALLEGATIONS.

The practice of obtaining leave of the court to commence an action under Section 501 (b) by good cause shown upon an ex parte, verified application has been criticized; Penuelas v. Moreno, 198 F. Supp. 441, 449 (S.D. Calif. 1961). But no author-ity has ever suggested that such an order -- granting leave to commence an action -- secured upon an ex parte showing of "good

cause", should be vacated solely on the basis of a deposition and exhibits. On the contrary, only an adversary proceeding has been suggested as a proper substitute for ex parte applications or permissible manner of attacking the basis for such an order. Indeed, many cases have found the "good cause shown" requirement to be satisfied by proper pleading alone. Aho v. Bintz, supra at 579; Executive Bd. v. International Bhd. of Elec. Workers, 184 F. Supp. 649, 653 (D. Maryland 1960) ("The complaint was verified. If true, its allegations constitute "good cause"); see, Gurton v. Arons, 339 F. 2d 371 (2d Cir. 1964).

When colorable claims are alleged in support of the application for leave to sue, and alleged facts are set forth which would provide "good cause" for litigation in behalf of union membership, the courts have uniformly deemed:

"it appropriate to grant the applicants access to (a) court and to permit consideration of the adequacy of particular causes of action at the appropriate stage of the contemplated proceeding." Wimbush v. Curran, supra at 318; see also, Addison v. Grand Lodge of Int'l. Ass'n. of Machinists, 318 F. 2d 504, 508 (9th Cir. 1963).

The court below however, permitted the determination of genuine issues of material facts -- the truth or falsity of plaintiff's varied and widespread allegations against the defendants -- to be resolved by a motion to dismiss with its attached exhibits, an affidavit of defendants' counsel in support thereof, and by reviewing plaintiff's deposition.

In Giordani v. Hoffman, 277 F. Supp. 722, 725 (E.D. Penn. 1967), the Court, quoting with approval from Horner v. Ferron, supra at

229, held:

"Defenses which necessitate the determination of a genuine issue of material fact, being beyond the scope of summary judgment procedure, are a fortiori, beyond the scope of a proceeding to determine whether a section 501 (b) complaint may be filed. Defenses involving disputed questions of fact should be appraised only after a trial at which the parties and the court can have the benefit of a complete inquiry, assisted by such pretrial, discovery as may be undertaken." See Sabolsky v. Budzanoski, supra at 1252.

It cannot be too strongly emphasized that it was plaintiff's genuine fear of reprisals, both physical and economical, from the defendants or their agents that caused him to be evasive and reluctant to reveal and name his sources of information at his deposition. Sadly, violence is nothing new to the NMU and has previously befallen rivals of union leadership. Plaintiff, in fact, was shot in the right arm in 1973 when he sought to press a court action to halt an NMU election because of alleged irregularities. The day before appearing for his second deposition he was beaten inside the NMU Hall; and his associates, members of his rank and file committee, have been threatened because of their support of him.

As noted in Philips v. Osborne, 403 F. 2d 826, 828 (9th Cir. 1968):

" The Act (the LMRDA) was a response to the report of the Select Committee on Improper Activities in the Labor Management Field, more popularly known as the McClellan Committee Report. This Committee uncovered widespread practices of misappropriation of union funds and illicit profits by union officers, as well as repeated instances of violence and racketeering. See Interim Report of the Select Committee

on Improper Activities in the Labor Management
Field, S. Rep. No. 1417, 85th Cong., 2d Sess.
(1958)."

It is in this context that the Court must view plaintiff's responsiveness, or lack thereof, at his deposition. All these facts and circumstances should be taken into consideration in determining whether "good cause" had been shown. See, Purcell v. Keane, 406 F. 2d 1195, 1200 (3rd. Cir. 1969).

Additionally, it should be emphasized that defendants' motion to dismiss came after only their pretrial discovery had begun. They had taken plaintiff's deposition at two sessions, had served written interrogatories and had "interviewed" plaintiff's supporters. Pre-trial discovery, however, is not available to a plaintiff suing under Section 501 (b), until after leave to file the complaint has been granted. Horner v. Ferron, supra at 229 n. 6. Plaintiff, not having access to defendants' nor the NMU's files, nor the opportunity at the time of defendants' Rule 12(b) motion to begin his pre-trial discovery, should not be unfairly prejudiced thereby.

The charges made by plaintiff in his complaint were considered by Judge Werker to be based upon mere hearsay and scuttlebutt. But when trial proceedings were permitted in the Morrissey v. Curran et al, 73 Civ. 204 specific information was elicited from defendant which confirmed the truth of this plaintiff's allegations though they appeared to be unanswered in his deposition at page 188,189. Exerpts from plaintiff's depositions at page 188 and 189 are as follows:

Q That paragraph alleges that the defendants made, approved or caused to be made approved, "...improvident, unauthorized and collusive contracts to guarantee pension and severance pay from the NMU General Treasury in the event of a declaration of invalidity of Union Pension Plans to the following non-member, NMU employees:"

Then it lists five employees: Mr. Ernest Olson; Mr. Milton Bright; Mr. Bernie Raskin; Miss Ann Diamond; and Mr. Eugene Spector.

Now, will you tell us on what facts you based your allegations that these contracts exist? In other words, how do you know that there are such contracts?

A I have been told by different members that they have the contracts.

Q What members told you?

A I can't give their names due to fear of reprisals.

However at page 448 of the minutes of the Morrissey case supra, it indicates the following: *ON 4/21/76.*

Q Has there been any talk about reducing the salaries, eliminating severance pay or reducing the pensions of the officers?

A No, sir.

Q You eliminated the severance pay of the seamen, didn't you?

A Yes.

Q Mr. Raskin recently retired from the union, did

he not?

A Yes, sir.

Q He wasn't a union member, was he?

A No, sir.

Q And he paid no dues to the NMU?

A No, sir?

Q Or to any other union?

A That, I don't know.

Q He received over \$100,000 from the pension, did he not?

A Yes, sir.

Q How much did he receive?

A How much did he receive? I don't know. About \$150,000, something around there. I'm not sure.

Q In a lump sum?

A Talking about a lump sum, yes, sir.

Here the trial proceeding indicated that Bernie Raskin who held the position of Director of Publications for N.M.U., a staff position only, received out of the general retirement fund one hundred thousand dollars (\$100,000) as severance pay when not only was the union membership not informed of this payment but their very own severance payments were no longer permitted. *Exh. E, F, H.*

Proof of unauthorized payments without notice to the Union membership is illustrated by page 4 of the minutes of Morrissey case previously cited wherein a payment of six thousand three hundred and fifty dollars (\$6,350.00) was paid for a painting of

the former national president of N.M.U.

I will give you an example. After Mr. Curran left the union, there is a bill to the union for a portrait of Mr. Curran, \$6,350. Where that portrait hangs, only the people in the NMU know. I would like to know, myself.

Additional unauthorized payments to Mrs Curran, wife of the retired president of N.M.U., came to light arising out of the Morrissey case when a Cadillac car was obtained for Mrs. Curran at a cost of \$8,023.19 and a rented Cadillac for Mr. Curran at \$10,040.88 for a period of two years. At the end of the two year period a purchase of this same Cadillac came out of the general treasury at a cost of \$3,942.00. *Exh. G, W.*

Further specific evidence of an improvident, unauthorized and collusive nature of contracts made by N.M.U. with staff employees involved their contract with one William Perry entered into on *(Exh. C)* August 2, 1966. The digest of a deposition taken of William Perry on file in the Court in the Morrissey case, indicates that Perry received \$176,602.61 on January 16, 1969 from the General Fund of the NMU for the duties of carrying out instructions of the president Curran, relaying messages and attending meetings. It is significant to note that Mr. Perry in suing upon enforcement of his contract against N.M.U. and the latter in their filed answer contained the admission that the Perry contract was illusory. *Exh.* Since this contract is but one of many negotiated by the NMU union officials, who knows how many others have been entered into in a

frivolous and wasteful manner at the expense of the union members who know nothing about such contracts and have never authorized them, for example, Hoyt Haddock received an N.M.U. pension, see Curran Wall's digest of depositions, Charles Snow's alleged \$50,000 pension, minutes annexed in subsequent format and Alvin Shapiro who was the administrator of the N.M.U. pension and welfare plan from 1966 to 1972 who also is the recipient of a pension from N.M.U. and also in possession of a contract. All the foregoing person's financial interests with the N.M.U. have never been disclosed or divulged to union membership or approval although the plaintiff specifically requested a copy of the pension annuity and employment contract of Mr Shapiro from the N.M.U. by letter dated 11/11/74. Exh. H, K, E, J.

As a further illustration of misappropriation of union funds and illegal distribution of said funds from out of the general treasury in direct violation of Judge Bonsol's order in the case of Morrissey v. Curran and N.M.U. et al, 69 Civ 442, is the situation of one M. Quinones, an elected union official of patrolman, who later became chauffeur of President Curran. This Mr. Quinones received a lump sum pension on retirement out of the officer's pension fund and general treasury, a total of one hundred and two thousand, three hundred and forty dollars (\$102,340.00), of which \$36,888.00 was taken out of the general treasury to supplement the lump sum payment. The foregoing illustration is presently extracted from the minutes of Morrissey case (73-204) page 25. 4/19/76. The instant situation clearly indicates a violation of Judge Bonsol's previous order and highlights the need for my case to proceed forthwith and

granting the affirmative relief requested by me in my complaint. The Court without any hearing and prior to a pre-trial discovery by plaintiff, granted defendants' motion even though a "good cause" showing had clearly been made on the face of the verified application, Plaintiff's affidavit with annexed exhibits and the complaint. Under the circumstances, this was error.

POINT III

PLAINTIFF MADE ADEQUATE SHOWING OF GOOD CAUSE ON VERIFIED APPLICATION
COURT ERRED IN DISMISSING BEFORE PLAINTIFF'S DISCOVERY BEGAN

Plaintiff was asked in his Examination Before Trial about persons holding dual positions in the union and was unable to specifically state details without an opportunity of discovery. Yet in the Morrissey case previously cited the following exposure was disclosed concerning dual positions held by one Charles Snow, a retired police officer. Exerpt taken from page 451 of Morrissey supra. *Exh. H.*

MR. MC INERNEY: I'm sorry for the conditions of Mr. Snow's health but I am asking what he received from N.M.U.

THE WITNESS: I don't recollect.

Q You know it was over \$50,000, don't you?

A I'm not sure, sir.

Q And he also received a pension from the N.M.U. Pension and Welfare Fund, didn't he?

A Pension and Welfare Fund? If I recollect, the man was in dual payroll.

Q He was getting paid from the N.M.U. and getting paid from the N.M.U. Pension and Welfare Fund?

A. Payroll.

Plaintiff based upon the foregoing specific examples of financial impropriety performed by the N.M.U. upon its members, was unable to disclose this information in a factual manner at the time of his depositions and in his complaint at the inception

of the action,,due to his inability to obtain discovery measures against the defendant; The Court in the Morrissey case (73-204) did not preclude the plaintiff therein from a showing of good cause based upon hearsay as evidenced from the following minutes of plaintiff Morrissey at page 419 and 420. Therefore good cause on the part of the plaintiff could not be determined until after discovery and a general trial of the issues herein.

Q All right. Is there any other source of information that you had for the allegations you make in that letter of August 2, 1971?

A Well, only that I am quite familiar with what happens in this union, I have been a member for 35 years, I am a former official in this union. I have been very active politically in the union for the last ten years, and I have all sorts of information from the members themselves. Offhand, I can't remember who they are.

Q You say --

A -- but I spoke with many members.

Q You say active politically in opposition to the present administration of the union?

A That's right.

Q Is there any specific source that you can tell us for your information that you put in that letter, other than the Pilot and the discovery before Judge Bonsal, specific source that you can tell us about now?

A Offhand I can't think of another, no.

Exh. L., W.

In Levinson v. Perry; _____ F. Supp. _____

71 LRRM 2554, the Court dismissed an action brought under Section 501 (b) of the Act on the ground that Plaintiff failed to comply with the request requirement of the Statute, while simultaneously rejecting the defendants' argument that "good cause" could not be shown because the verified complaint was based on "information and belief" rather than personal knowledge; The Court stated:

"We find no merit to defendants' further assertion that the statutory requirements of a verified application requires an affidavit based on personal knowledge and not one based on information and belief. *Giordani v Hoffman*, 278 F. Supp. 885. While conceivably lack of personal knowledge on the part of the member plaintiff might be a factor deserving of consideration in determining 'good cause', that circumstances standing alone should not be determinative of the right to bring suit." (citation omitted-emphasis added).

In fact, the Court in *Levinson* stated, "Considering all the papers before us, we find ourselves in complete accord with Judge BRYAN'S finding of 'good cause'."

Moreover, "The verification requirement pertains to the 'application' for leave to file a complaint and not to actual pleading." *Horner v. Ferron*, *Supra* at p. 227 (emphasis added). In the case of *Levinson v. Perry* _____ F. supp _____ supports the view that personal knowledge of a complainant is not necessary for a showing of good cause.

SINCE the Court had ordered the Plaintiff to submit to a Deposition, and the Defendants had already interviewed Plaintiff's three witnesses of which, the

Plaintiff's witness Frank Arnold refused to retract his statement that he had made to Dinko about the unavailability of the Pension Plan in the Port of Baltimore even in light of coercion and personal risks of union reprisal (attached is a handwritten letter -a copy- to which he is willing to testify as to its contents as Exh. *M*), the court was allowing the defendant to begin Pre-trial Discovery, one would therefore assume that the case was to be tried or heard since Dinko had had Leave to Sue. Therefore on this assumption it was assumed by Dinko that the Court should have allowed him to begin his Pre-trial discovery also, I believe this would have been fair rather than over rule another Judge's decision, without even a hearing.

Again if the Court felt that there was no good cause shown and Dinko should not have been permitted to Sue, this is more reason that he should have had a Hearing to determine the facts better rather than order Plaintiff to submit to a Deposition. A Judge does have the right to investigate on an application for leave to sue , but a Plaintiff can also obtain an Ex-Parte order; one must remember that it is the Judge's criteria to sign an Ex-parte Order, it is not a right of a Plaintiff to get such an order automatically, it is the Court's prerogative to or not to give it. Judge Werker had the case right after the order was signed, so he could have still held a hearing if he felt or had doubts that good cause was insufficient for the signed order.

Why submit a Plaintiff to the rigors of a vigorous deposition if the Court finds no justification for his suit? Dinko from the outstart had problems in obtaining attorney, in fact when the Judge ordered him to be deposed the Plaintiff's attorney was being released from the case, and Dinko had no attorney when the order came down. TO FILE A SUIT UNDER THIS SECTION OF THE ACT IS A GREAT FINANCIAL BURDEN TO THE PLAINTIFFS NOT ONLY IN THE NMU BUT IN ALL UNIONS. It seems that Congress set up this feature as the true safeguard against unions being unduly harassed because no one wishes to put his money out and go through the mental aggravation of being bogged down with legal matters that

that you do not understand plus the intimidation, harassment, coercion, threats, beatings and fear for your life unless you believed in it enough and felt it is worthwhile and a good cause, there must be a dedication to stand this torment.

I FOUND MYSELF AN ATTORNEY IN A HURRY because I did not want the case dismissed if I did not follow the Judge's order. I submitted to the first deposition held on 4-15-75 we could not complete it on that day. The union attorney even got very high-handed with me at one point and I felt I was being threatened (see p. Dinko deposition 4-15-75. Exh. ~~Record~~). On 4-21-75 I was in the union hall and I was beaten and roughed by some petit union officials. At the time I did not take the punches and jabs too seriously it hurt but I felt it would be alright, however later that evening I felt the pains and I went to my Doctor, he gave me medication and told me I'll be drowsy. However I went to the office where the EBT was to be held on that morning of 4-22-75 I explained my attorney what had happened and that I was under sedation by my Doctor and I will prefer not to submit for the EBT that day. My attorney asked for an adjournment and the defendants attorney refused saying that if I did not submit he will inform the judge that I failed to comply and ask for a dismissal. (see EBT 4-22-75 where I put into record that I was sedated p. 144-8 Exh. ~~Record~~). I felt that the EBT was taken on 4-22-75 under duress. Before the EBT transcripts got to me for my approval, I was hospitalized due to injuries sustained from another beating in the Union hall. I was released around 6/28, and I remained in recuperation until 7/21 when my Doctor said I can get out of bed.

I never signed, notarized, approved or verified the minutes or transcripts that the court and every one has been using, for since I was under sedation at the EBT on 4-22-75, I don't recall what I said and if there are any inaccuracies I would not recognize them or truthfully be able to swear to those transcripts.

It is my belief that the Court accepted it when submitted by the union attorney not realizing that the transcripts have not been signed or notarized by Plaintiff to date, and Plaintiff do not intend to sign and swear to the tran-

transcripts or minutes of the EBT of which I was submitted to under sedation. Since the Court relied very heavily on these transcripts of Dinko's deposition Is there a possibility that the Court could have made an error in determining the Plaintiff's showing of good cause on an unreliable and possibly a legally in-admissable document?

The Judge granted a hearing for a forma pauperis after he had given the forma pauperis, he rescinded the order on the submission by the union of an Affidavit in Opposition that had no grounds to prove that Dinko was other than what he professes except that it question his ability to survive and and concede that he was unemployed for sometime. Was that hearing necessary? Why did not the kind Judge not have a hearing to really determine the facts in this case, which is more important to the Plaintiff than a forma pauperis?

Why was there a pre-trial conference if the Judge did not intend to have a hearing or trial? This pre-trial conference was held on 4-1-75, I do not recall it, I don't recall having an attorney at that time but the Docket so indicates. What precipitated the Judge to change, and be adamant that no hearing is necessary to settle the good cause question?

The Judge refers to the publicity that Plaintiff gave this case the only publicity given this case with Plaintiff's knowledge was a News Conference 2-75 held by the Rank and File Committee that Mr. Dinko represents. This was done to let the members know what was nappenning, this was done in an informing capacity; since none other than the ruling union administration possesses the membership lists, ship lists, shoreside job locations, and installations this was an effort to get to the membership, which in a class action suit members should know what is happening. The News Releases given to the press was distributed to the members also. The other fliers that concern only the union affairs was submitted to the court by the union attorney in an effort to discredit Dinko in court, the cartoons and others such submitted were in existence before the filing of this case and is not relevant and has no place in the halls of

justice. James Morrissey in the minutes of his trial on 4-21-76 pages 419 & 420 he admits his political involvement and his fight to clean up the union for over 10 years and that does not disqualify him from the Court as a credible plaintiff, and certainly if any one is disappointed or had suffered disappointments in the internal affairs of the union it is Jim, and no Judge has told him that he is bias. *Exh. L.*

There is no way that at this point after my first appeal that the District Court could have determine the prospects of success upon the merits or determine the issue of good cause as was defined by the Court of Appeals. The Judge assumed that he was permitted to proceed on documentation outside the complaint. What kind of documentation was submitted to him without my knowledge or without service upon me the plaintiff? I was of the understanding that anything served to the Judge must also be served on the parties to the action, so that they can have an opportunity to rebut or whatever. Somewhere I get a feeling that may be, I might have been left out of the show. When the Court of Appeals made their decision on 2/13/76 The decision got to my attorney around the last week of February, before we could have even discuss about preparing a Memorandum of Law for Judge Werker we were notified that he had made a decision within two weeks of the Court of Appeals opinion.

Therefore the District Court erred in assuming the above and could not come to a fair decision based only on Plaintiff's unsigned depositions and his complaint without some argument from Plaintiff, in that outside documentation was submitted without the knowledge of Plaintiff, and an opportunity for him to rebut or make motions or to be at least a party to his own case. A hearing was necessary for outside documentation, documentation outside the complaint to be admitted to the Court without Plaintiff's prior knowledge, and an opportunity for arguments. The Court clearly went outside the perimeter of the Court of Appeals findings and guidelines.

ISSUE

Elected Officials and Appointments .

In Dinko's deposition of April 22, 1975 in reference, excerpts from pages 192-199

Q. In paragraph (i), you allege that defendants appointed "..... men elected to union office, to different positions in order to pay them two and three times the salary of the office to which they were elected by the union membership". to which men are you refereeing

Dinko responded giving names of several officials including Mr. Rich, Mr. Hampton Mr. Martinez, Mr. Zeidel and others.

I, will take the opportunity here to present some facts that I could not present to the District Court since I, had no Hearing. I, beg the Court's kind patience, I will ttake the example of Mr. Hampton.

Mr. Hampton was elected in 1973 to the position of New York Patrolman this this is the lowest elected position. some time thereafter he was made a Regional Representative/Director without the members approval. He is in charge of Contract Enforcement. But Mr. Hampton is also the Mayor of Paulsboro to my knowledge since about or before 1974, he was first "Interim Mayor" then he was later elected, as Mayor of Paulsboro which he still is to my knowledge.

At the 1976 NMU Convention it was revealed the salaries of some Officials, which I will list : The salaries listed here are those that were already (Exh-X) inflated in 1975 with membership approval as provided for after the members ratified a contract with an increase of about 12%, the officers are entitle to the same

<u>Job Titles.</u>	<u>Salaries 1975 with 12%</u>	<u>New Salaries</u>
President	54,000	85,000.
Sec-Treasurer	39,000	60,000
V-Pres.	33,000	40,000
Reg.-Rep./Dir.*	25,100*	35,000*
Port Agent	20,700	25,000
Patrolman*	14,500*	18,500 *

ALook at the above will show that the salary of a patrolman is almost half that of regional Rep/dir. , which is what was done with Mr. Hampton. The expense allowance

of the two positions cannot be compared one job is on the local level while the other is on the National level. Patrolman expenses are limited and they do not get NMU credit cards; while the other job has unlimited expense account & Creditcard. Now that salaries and expenses are combined the resulting figure can be possibly not double and triple but quatraple that of a patrolman, the office to which he was rightfully elected to by the members and moved from without their knowledge. Is it possible that he is still an elected patrolman covered in the Officers Pension Plan? Regional Rep/Dir. is not an elected position. Is this one reason for having the Plans joined so that these non-elected into high positions can enjoy the fabulous benefits of the Officers Plan, credit -card priveleges and the unlimited expenses enjoyed by NMU big wigs? We pay the ridiculous tabs, as operating expenses. Exh. D. See Digest of Perry's Deposition p.2 Headquarters expense \$626,260 a month. Exh. W.

NMU's GOOD CAUSE FUND. is funded by monies from the General Fund, for Charitable purposes mainly, and are actually diverted the contribution and actually use it for political purposes. In NMU Pilot November, 1975, The National Office Meeting Minutes of September 12, 1975, shows that Mr. Hampton was present at that meeting. That Number 4 on the Agenda is the Approval of Good Cause Contributions. Under 4 at h. reads as follows on page 17 of The said issue of the II/75 NMU PILOT: In The National Office Minutes:

h. Second Baptist Church (Banquet honoring Elwood B. Hampton Mayor of Paulsboro, New Jersey).....\$300. (Exh. N.)

The above are examples of violations of Section 501 (a), to hold the monies of the organization and not for adverse parties and purposes. Mr. Dinko was founded in his allegation of 15 (i). And the District Court erred

THE INTENT OF CONGRESS IN LEGISLATING LMRDA was to deal with such abuses as the ones I have established in my case. Should my appeal be denied, then we, the membership has no where else to go, except back to Congress. But Congress in passing this Law intended for members to go into Court, and for the Court to be the avenue where members can seek relief. The Court was delegated the job of enforcing this anti-corruption law. Therefore this Court does have jurisdiction. I, pray This Court to Grant my appeal and the relief sought, for I have Good Cause
Exh. O.

There can be no doubt that plaintiff after thirty years of being a bona fide member in good standing of his union has a justified basis for bringing this suit to determine ~~how~~ his moneys are being expended and in what manner. At the very least as a third party beneficiary the plaintiff has standing to sue; yet even Judge Werker admits the plaintiff has standing under Title 29, section 431. Indicative of the fact that defendant has not complied with full disclosure under this law is exhibit *P*, which shows that certain credit card charges amounting to \$963,506.51 do not state the following:

1. The name of the person who incurred each such charge, the nature and purpose of each item charged or whether or not the payment of each such item was reflected in the LM 2 form filed with the Secretary of Labor (29 U.S.C. § 431 (b) (3) and (6)). *Exh. P.* The information sought does not appear on the LM 2 forms filed.

Representative of further violations of Title 29, section 431 is the annexed exhibit wherein \$500,000.00 was paid to the N.M.U. by American Export lines shipping Co. for the tie-up of the S.S. Independence and Constitution, which funds there exist no present accounting for according to N.M.U. officials. These moneys affect the personal financial interests of this plaintiff as he was a permanent crew member of the S.S. Independence and should have been allocated to his pension or benefit plan. This has not been done nor has the Union even informed the members of the receipt of this moneys or its present whereabouts. Also shown from this exhibit is the unaccounted sum of \$700,000 which was transferred

from General Fund to a Fighting Fund account for legislative political purposes. Exh.q.,T.

There were payments out of the NMU General Fund Well in excess of \$200,00. a year in some years to such Committee (The AFL-CIO MARITIME COMMITTEE). Exh. R., K, S.

The practice of taking pay in lieu of vacation" is not reflected in the reports. Ex.D. The sale of the Headquarters building which officials acknowledged had cost \$6.5 Million in 1964, was being depreciated at about a total of \$1, 161,737.13. In 1973 the members voted to allow officers to negotiate the sale at a first offer of \$6 Million with the promise that they will negotiate a higher price, When the building was sold the Book Value was \$6,280,168.47 the membership was never told that the building was sold at a loss on the book value the actual loss was even more than that figure. Exh. U., V. None of these things are reflected in the said Report. Nor did the Periodic Financial Reports to the membership reveal that the Net Price on the sale was actually \$5,943,400. Nor did these periodic reports showed that the membership will have to pay an additional cost of another \$587,576.67 for Leasehold improvements for the new Headquarters site.

Section 43I (c) is an impossibility for members outside the National Office level; who defines 'just cause' in order for you to inspect the books. The hierarchy of the union will never find just cause for a member, especially one defined as a dissident. My letter does ask for a report but it was never complied with. Such reports will only be shown through court orders.

As to section 307(a) it does not apply to Dinko as defined by the Court in this instance. The NMU membership as well as Mr. Dinko is in the capacity of an employer they contribute to the Staff and Officers Pensions etc; out of the

General Fund which are direct contributions of the membership in the form of Dues etc., Therefore Dinko does have every right to know how his money is spent by the Officials in their capacity of Trust and recipients, as their Benefit and Pension and Welfare plans are Funded from the General Fund-members money. It is Common Law that when a person pays for something he has a right to know what he gets for his money. I do not know the Law but there is a Law that if you are a stock holder you are entitle to an accounting and a vote as to what is done. Similarly a union member is in a capacity similar to a stock holder, the Law makes that analogy by its provisions in the LMRDA in Title V., which deals with Fiduciary Responsibilities of Union Officers; also Title II. through its Reporting Requirements. A member has a right to ask for an accounting of any fund for which he is obligated to pay, he also has the right to ask for an account of how his money is spent. Therefore the Judge again erred in applying the wrong law to Mr. Dinko. Title 29 sections 307(a) and 308(b) does not hold or apply to this issue, rather Title V is applicable and the old ever faithful Common Law. Good Cause is shown.

In this instant matter, the Court below, without any hearing and prior pre-trial discovery by plaintiff, granted defendandt's motion even though a "good cause" showing had clearly been made on the face of the verified application, plaintiff's affidavit with annexed exhibits and the complaint. Under the circumstances, this was error. Also the Court has not complied with the instructions of the Court of Appeals, The Court has again made a decision without showing that each and every allegation of plaintiff is without merit. The Court based its decision on plaintiff's complaint and depositions and ignored the suggestion of the Higher Court that the possibility of a hearing will also serve the purpose of searching for "good cause." The Higher Court observed in procedural aspect of determining the issue it observed that at a contested hearing, if there was one, the District Judge may "look somewhat beyond the complaint." Under the circumstances, again the Court has erred.

CONCLUSION

THE JUDGEMENT APPEALED FROM DISMISSING THE COMPLAINT HEREIN SHOULD BE REVERSED.

REQUEST FOR COURT'S INDULGENCE.

I hereby ask permission to kindly beg the Court's indulgence. The Court must have surely observed my use and reference to The Morrissey v. NMU, 73Civ.204. I will like to inform the Court that I sought to intervene in that case. I have a motion pending before Judge Conners since around August, 1976, he has not made a decision on that as yet. The basis of that motion is Rule 24 FRCP; that my claim and the main action have questions of law and in common, with those in Morrissey's case. Both cases deals with compliance with LMRDA, 29 USCA 501 is at issue, plus at least 18 allegations of wrong doings by Defendant NMU in common involving common facts of money paid or received and actions of officials of the NMU and Pension Fund Trustees; also the main issue deals with the Staff and The Officers Pension Plans and the funding of those plans out of the General Fund. Morrissey questions the violative actions concerning these Plans prior and upto 1972,. Dinko on the other hand is attacking similar actions of the same Plans that occurred in 1974, the one is a continuation of the other. Attached is Appendix A as an exhibit, it lists the similar facts and allegations of both cases. The only basic difference in the two cases has been the Relief sought. Dinko is asking for the creation of a membership Watch Dog Committee, while Morrissey seeks Receivership; however in a letter to the Judge on 3-10-76, Exhibit by Morrissey's attorney a request was made unofficially for a Watch Dog Committee also. The two cases are so similar that they are almost a duplication of each other. Allegations are broad and leaves room for a lot of latitude in each

case; so that a specific mentioned in one case and the other finds out it can then be easily incorporated into the other. For example Dinko mentioned certain specifics in his complaint, verified application and his deposition that was quickly incorporated into Morrissey's case in 1975 and in 1976, a fact that I am happy about since I have not been as fortunate as he has been in the courts nor as lucky as he is to have a good attorney for so long; so any assistance I can give him in his fight for Justice for the Rank and File membership he can have with my blessings.

However due to the similarity of the two, what happens to one can harm the other, this true of all Court Decisions, a precedent for one person can harm or benefit many. This was my reason for wishing to intervene on Morrissey's case as if the two cases are together we then don't have to worry about the other's case.

The next reason is that both actions are class actions in behalf of the NMU membership, should both cases win eventually it is a double expense.

The next reason is, why should two cases so similar but yet different be tried by two different Judges in the same Court, a double expense?

Should I be Successful in my Appeal, which I am confident that I would win: I, hereby beg the Court, if it is not too late, to JOIN the two cases, and have one litigation once and for all to straighten out the problems we are facing in our union in regards to violation of the Laws, mis-use of union funds, and the infringement of members rights and many other violations of the Law.

I, hereby reiterate my request that the Dinko and the Morrissey cases BE JOINED.

I thank the Court Sincerely for its kind and patient indulgence.

Respectfully submitted,

Dated: February 26, 1977

ANDY DINKO, Pro se,

PLAINTIFF-APPELLANT.

III *Good Cause*

We turn now to the other basis of Judge Werker's decision. Section 501(b) also provides that "No such proceeding [to sue union officials] shall be brought except upon leave of the court obtained upon verified application and for good cause shown" The judge held that plaintiff had not made an adequate showing of good cause. When he so ruled, Judge Werker had before him a number of documents, including plaintiff's verified application for leave to sue, a lengthy affidavit of defendants' attorney, and plaintiff's deposition. Plaintiff's verified application contained a variety of charges of wrongdoing, which can be roughly summarized as alleging an improper revision of the union's officers' pension plan, the withholding of certain financial and membership data from plaintiff and other union members, and the misappropriation of union funds. Defendants' affidavit answered each of plaintiff's many charges in detail and offered evidence that plaintiff's charges were, for the most part, based on unbelievable hearsay or his own credibility, which is, according to defendants, nonexistent.

Judge Werker did not discuss plaintiff's charges or defendants' response. Stating that he had the benefit of defendants' "detailed exhibits . . . particularly the deposition of the plaintiff," the judge merely held that plaintiff had not established "good cause," which he defined only as resting "in the sound discretion of the court." Plaintiff claims that the judge's ruling was both substantively wrong because good cause was established and also procedurally defective because the complaint should not have been dismissed "without a hearing or trial of the allegations."⁹

9 Brief for Plaintiff-Appellant, 13.

The latter contention is easily disposed of. Section 501(b) does not prescribe any procedure for a determination of good cause. The statute explicitly authorizes an ex parte determination, although it does not require it. See *Horner v. Ferron*, 362 F.2d 224, 228-29 (9th Cir.), cert. denied, 385 U.S. 958 (1966). There is support for the view that before finding good cause and allowing the action to proceed, the better course is to give union officials a chance to demonstrate that good cause is lacking. *Penuelas v. Moreno*, 198 F. Supp. 441, 449 (S.D.Cal. 1961). The same procedural result is reached when, as in this case, the district court determines ex parte that there is good cause but then allows defendants to move, in effect, to vacate that order.¹⁰ See, e.g., *Levinson v. Perry*, 71 LRRM 2554 (S.D.N.Y. 1969); *Schonfeld v. Rarback*, 61 LRRM 2043 (S.D.N.Y. 1965). We approve of that practice as a practical means of protecting union officials against vexatious and harassing suits, the obvious policy behind this portion of section 501(b). See *Horner v. Ferron*, supra, 362 F.2d at 228. In this case, contrary to plaintiff's contention, Judge Werker did hold a hearing although no evidence was taken. In that respect, the judge did not err; to determine good cause no more was required, certainly not—as plaintiff argues—a trial.

Plaintiff's claim that good cause was shown is more troubling. Ordinarily, one needs no permission to litigate under a federal statute. The requirement that plaintiff obtain leave of court upon good cause shown in order to proceed with his lawsuit is an unusual one. Unfortunately, the legislative history is unilluminating as to the content of the requirement. As a result, the courts have been left to wrestle inconclusively with the problem of defining good cause. It has been observed that Congress must have

10 That two different judges were involved here seems to us irrelevant.

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intended more than that a union member has requested the union to sue and the union has failed to do so, *Penueles v. Moreno*, supra, 198 F.Supp. at 444, and the proposition seems reasonable. But beyond that, the reported cases have for the most part not devoted much discussion to defining good cause in this context.

One obvious meaning of good cause could be whether the union member's application for leave to sue states a good cause of action on its face. District courts, familiar with this notion in the context of motions to dismiss, have instinctively embraced it as a minimum basis for good cause. See e.g., *Wimbush v. Curran*, 356 F.Supp. 316, 318 (S.D.N.Y. 1973) ("proposed complaint alleges colorable claims"); *Schonfeld v. Rarback*, supra, 61 LRRM at 2043 (papers "state a claim upon which relief may be granted"). Both of these decisions, however, also emphasized the facts set forth in the moving papers. See *Wimbush*, supra, 356 F. Supp. at 318 (complaint supported by affidavits alleging "facts which would provide good cause for litigation"); *Schonfeld*, 61 LRRM at 2044 ("a wealth of facts and acts which plainly support" the charge).

The most extensive treatment of good cause is found in *Horner v. Ferron*, supra, although the excellent discussion there focuses mainly on the procedural aspects of determining the issue. The court did observe, however, that at a contested hearing, if there was one, the district judge may "look somewhat beyond the complaint." 362 F.2d at 229.

Thus if the defendant can establish, by undisputed affidavit, facts which demonstrate that the plaintiff is not a member of the defendant union, or that the action is outlawed by a statute of limitations, or that the action cannot succeed because of the application of the principles of *res judicata* or collateral estoppel,

or that plaintiff has not complied with some controlling condition precedent to the bringing of such a suit, then although these defects do not appear on the face of the complaint, they may warrant denial of the application.

However, we think it inappropriate to consider, at such a hearing, defenses which require the resolution of complex questions of law going to the substance of the case. Defenses of this kind should be appraised only on motion for summary judgment or after a trial. Defenses which necessitate the determination of a genuine issue of material fact, being beyond the scope of summary judgment procedure, are *a fortiori*, beyond the scope of a proceeding to determine whether a section 501(b) complaint may be filed. Defenses involving disputed questions of fact should be appraised only after a trial at which the parties and the court can have the benefit of a complete inquiry, assisted by such pre-trial discovery as may be undertaken. [Footnotes omitted.]

Id. This discussion clearly comes down on the side of looking to more than the complaint, but how much further is hard to say. We agree that the district judge is not limited to the face of the complaint, if he chooses to go beyond it, as Judge Werker did here in relying on "the numerous detailed exhibits" offered by defendants.¹¹ But this does not advance analysis as far as is necessary. If an "undisputed affidavit," in the *Horner v. Ferron* phrase, establishes a fundamental legal defect in the action, we agree that good cause is not shown. But if the material facts

¹¹ In *Tucker v. Shaw*, 378 F.2d 304 (2d Cir. 1967), neither we nor the district judge, 269 F. Supp. 924 (E.D.N.Y. 1966), looked beyond the "detailed factual verified application," which was considered *ex parte*, in finding good cause.

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are in dispute, the problem is more complex. We agree with the point made in *Horner* that since a genuine dispute as to a material fact would bar summary judgment, a fortiori such a dispute is "beyond the scope of a proceeding to determine whether a section 501(b) complaint may be filed." *Id.* The factual showing to institute a suit should be no more demanding than that required to defend it against a motion for summary judgment; indeed, it should be somewhat less, since at the earlier stage a plaintiff has not yet had a chance for discovery and a defendant will still have the later protection of a summary judgment motion.

It has been suggested that good cause in this context should mean that the plaintiff has made a showing of probable cause, with the latter defined as "a reasonable ground for belief in the existence of facts warranting the proceedings complained of." See Clark, *The Fiduciary Duties of Union Officials Under Section 501 of the LMRDA*, 52 Minn. L. Rev. 437, 466 (1967). The suggestion finds support in an excerpt from the legislative history of the section.¹² Moreover, we have used an analogous concept when plaintiff union members in a section 501 suit move to prevent defendant union officials from using counsel ordinarily employed by the union. In an early case under the Act, we suggested that the test for that relief should be

whether the plaintiff has made a reasonable showing that he is likely to succeed, and whether the conduct of the defendants is in conflict with the interests of the Union.

¹² Senator Javits, one of the sponsors of the Kennedy-Ervin bill in the Senate, from which the good cause concept was apparently taken, stated:

If the member is given leave to sue—in other words, if he shows some probable cause—he may sue. . . . [Emphasis added.]

105 Cong. Rec. 6529 (1959).

See *Holdeman v. Sheldon*, 311 F.2d 2, 3 (1962) (per curiam); *Tucker v. Shaw*, supra, 278 F.2d at 396-97. "Good cause" is an elastic concept, and is often used as a shorthand summary of the underlying policy reasons why a litigant should be able to attain a specified result.¹³ Here, two policies compete: supervision of union officials in the exercise of their fiduciary obligations and protection, through a preliminary screening mechanism, of the internal operation of unions against unjustified interference or harassment. We believe that both these policies are served if good cause in section 501(b) is construed to mean that plaintiff must show a reasonable likelihood of success and, with regard to any material facts he alleges, must have a reasonable ground for belief in their existence.

Returning now to the case before us, we do not know what standard of good cause Judge Werker applied. We do not fault him for this; the practice has apparently been to determine good cause in a conclusory manner, without any findings or detailed discussion.¹⁴ While findings of fact and conclusions of law are not required in the technical sense, it would be most helpful in a case like this to have a fuller explanation of the bases of the district court decision. Cf. *Horner v. Ferron*, supra, 362 F.2d at 229 n.7. After all, whatever a judge does in this situation has serious implications. Denying leave to sue is usually the end of the lawsuit for plaintiff, and allowing the suit to proceed is, under this statute, also a grave decision. There are numerous allegations in the complaint to which defendants offered a number of varying responses. How the district judge assessed each should be made clear. For example,

13 E.g., the good cause requirement of Fed. R. Civ. P. 35. See *Schiagenhauf v. Holder*, 379 U.S. 104, 117-22 (1964).

14 E.g., *Wimbush v. Curran*, supra note 7; *Schonfeld v. Rarback*, 61 LRRM 2043 (S.D.N.Y. 1965).

1930

plaintiff has made a number of factual charges which defendants characterize as "wild" and completely unsubstantiated, and give their reasons for so asserting. If the district judge concluded that plaintiff did not have a reasonable ground for belief in the existence of the facts upon which these allegations are based, it would be helpful if that conclusion and the reasons for it were stated. Similarly, if the claimed defect in publishing the terms of the revised pension plan was on its face legally untenable, the judge should make that basis of his opinion clear.

Accordingly, we remand for further proceedings consistent with this opinion. Costs to abide the event.

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1930. EX.

SHANNON WALL DEPOSITION

Digest

He resides at 12 Stone Fence Road, Allendale,
New Jersey.

He was Secretary and Treasurer of NMU.

He is now President.

The judgment in the prior action was paid to NMU
in February 1972 in the sum of \$674,222.60.

In February 1972 \$460,365.00 was withdrawn from
NMU funds for "Supervisory Employees Pension Plans".

He does not know the specifics of these Plans.

In 1963 the practice continued of making payments
to officers "in lieu of vacations".

It was made retroactive to pick up years back to
1958.

He claimed and received payments in lieu of
vacation.

He signed the Perry contract.

He does not recall any talk about any urgency in
keeping Perry happy.

The Perry contract was signed by him at Curran's
request.

He does not recall seeing the Perry contract prior
to its signing.

Mr. Curran and Mr. Freedman were present when he
signed the Perry contract. Also Mr. Perry.

No one asked Curran any questions about the signing.

A

In this action the proposed plaintiffs would seek to have the trustees of the Officers' Fund surcharged for their wilful and deliberate failure to take the appropriate steps to make their fund whole and, in addition, to surcharge the officers of NMU for permitting payments to be made out of the general funds to those very same persons that the Court excluded from participation in the Officers' Fund.

XIX

On January 31, 1972, \$674,222.60 was returned to the NMU as a result of the prior litigation by the trustees of the Officers' Fund.

The federal courts had determined that payments had been made to the said fund for persons not qualified to participate in that fund because they had not been elected officers of the NMU and because the NMU Constitution as amended limited the participation in that fund to elected officers of NMU.

X Upon receipt of the \$674,222.60, Curran and Wall, on information and belief, did suffer and permit a payment of \$460,365.00 to be made to one Alvin Shapiro for the benefit of the very same persons excluded by the judgment of this Court.

That fund has substantially increased, on information and belief, by additional payments thereto and by ordinary growth and income thereon.

MORRISSEY Affidavit
IN Case 73-204 11/22/72. EX.
-17-

B

AGREEMENT made this 2nd day of August, 196

and between the NATIONAL MARITIME UNION OF AMERICA, AFL-CIO (hereinafter referred to as the "NMU"), and WILLIAM PERRY (hereinafter referred to as "Perry").

WHEREAS, Perry has been employed by NMU in the capacity of Assistant to the President since the day of , 1963, pursuant to Article 13, Section 1(f) of the Constitution of the National Maritime Union of America, AFL-CIO; and

WHEREAS, Perry has been of invaluable service to the President of the NMU in the performance of his vast responsibilities and important duties in the conduct of the union activities, and Perry also has been of great assistance to the National Officers in assisting them in their duties and in otherwise performing important duties on behalf of NMU; and

WHEREAS, the NMU, its President and the National Officers desire that Perry continue to serve as Assistant to the President of NMU, as an inducement to him to continue to serve in this capacity and intending to be legally bound hereby, it is mutually agreed by and between the parties as follows:

1. The parties hereby agree that Perry shall continue in the employ of NMU to serve as Assistant to the President of NMU until October 20, 1974.

Upon the expiration of said original term, said employment shall continue thereafter under the same terms for successive additional terms of four (4) years each, unless either party notifies the other in writing, at least six (6) months prior to the expiration

W.P.

W.P.

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of any term of this Agreement, of intent to terminate said Agreement, at the end of the then current term. In absence of such notice, this Agreement shall continue from four years to four years until so terminated.

2. Perry's compensation during the term of this Agreement, or any renewal or extension thereof, shall be the same as the compensation paid to him as of July 1, 1966, including all contributions to the NMU Officers Pension Plan and any insurance or other fringe benefits presently available or payable, or which may become payable or available in the future to the NMU National Officers during the term of this Agreement or renewal or extension thereof. The rights, compensation and benefits conferred hereunder shall be in addition to those presently and hereafter enjoyed by and accruing to Perry (including but not limited to severance pay and pension benefits, inter alia), and shall not be deemed to take away, change, diminish or limit any of same in any manner.

3. In the event that this Agreement or Perry's employment should be terminated, with or without cause, prior to the expiration date hereof or of any renewal or extension, or in the event that Perry should become incapacitated from performing his duties, either totally or partially, by reason of illness, injury, physical incapacity or any other cause, Perry shall be entitled to continue to receive his said salary in full, including contributions to the NMU Officers Pension Plan and any other fringe benefits payable to the National Officers as under paragraph 2 hereof, during the balance of the term hereof or any renewal or extension. In the event, however, of such termination, or if such incapacity should be substantial or total, Perry shall have the option to demand and receive at one time or over any period that he shall specify an amount equal to the said total salary, including

W.P.

L.S.

contributions to the NMU Officers Pension Plan and any other fringe benefits payable National Officers which he would have received during the balance of the original term any renewal or extension hereof.

4. For the purposes of determining Perry's entitlement to participation and benefits from, the NMU Officers Pension Plan, the parties recognize, understand and agree that Perry shall be deemed to be a "Participant" in "Covered Employment" (as defined in the said Plan) during the full period of the original term of this Agreement, the full four-year period of each renewal or extension thereof, notwithstanding anything to the contrary contained in paragraph 3 or any other provision of this Agreement.

5. This Agreement and all the terms and conditions hereof shall be binding upon the parties, and their heirs, beneficiaries, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto duly executed this Agreement the day and year first above written.

NATIONAL MARITIME UNION OF AMERICA
AFL-CIO

By

Joseph Curran
Joseph Curran, President

Shannon Wall
Shannon Wall, Secretary-Treasurer

Mel Barinco
Mel Barinco, Vice-President

Rick Waller
Rick Waller, Vice-President

James J. Martin
James Martin, Vice-President

Robert Nesbitt
Robert Nesbitt, National Representative

Peter Becker
Peter Becker, National Representative

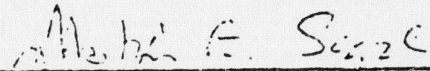
Leo Strassman
Leo Strassman, National Representative

William Perry
William Perry

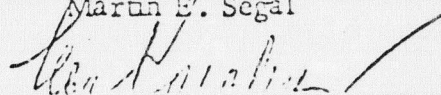
Intending to be legally bound hereby and in consideration of the reliance hereto by the parties to the foregoing Agreement, we hereby acknowledge and agree paragraph 4 of the said Agreement shall be binding upon us and our successors in determining William Perry's entitlement to participation in, and benefits from, the N Officers Pension Plan.



Abraham E. Freedman



Martin E. Segal



Leon Karchmer

Trustees, National Maritime Union
Officers Pension Plan

He received money in 1972 "in lieu of vacation".
His basis for this was "by not taking vacation".
The practice was commenced in 1963.

The practice of pay in "lieu of vacation" was
not announced to the membership.

Officer vacation was originally 30 days. This
was increased in 1969 to sixty days.

The membership was not advised, when the vacations
were extended, that the officers had not been taking vacations.

He was furnished in 1940 by NMU with an American
Express Credit card and has had it since.

He was also furnished with a Diners Club card, a
Carte Blanche card, a Dealers Leasing card and an Airline
Credit card.

NMU leased a car for his use from Avis.

His car rental, United Airline charges and hotel
bills were all paid by NMU.

His signature appears on the LM-2 reports.

NMU operating disbursements for National Headquarters
for the month of February 1972 was \$626,260.

Something close to \$500,000, of the money recovered
by the union from the Officers Pension Fund was put in a
separate bank account to establish a pension plan for those
deprived of a pension by the judgment in the prior action.

This money was paid to the Amalgamated Bank.

This resulted from action taken at a National
Office meeting.

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Barisic-direct

2 salaries, eliminating severance pay or reducing the
3 pensions of the officers?

4 A No, sir.

5 Q You eliminated the severance pay of the seamen,
6 didn't you?

7 A Yes.

8 Q Mr. Raskin recently retired from the union, did
9 he not?

10 A Yes, sir.

11 Q He wasn't a union member, was he?

12 A No, sir.

13 Q And he paid no dues to the NMU?

14 A No, sir.

15 Q Or to any other union?

16 A That, I don't know.

17 Q He received over \$100,000 from the pension, did
18 he not?

19 A Yes, sir.

20 Q How much did he receive?

21 A How much did he receive? I don't know. About
22 \$150,000, something around there. I'm not sure.

23 Q In a lump sum?

24 A Talking about a lump sum, yes, sir. ✓

25 Q And Mr. Breit, he is not a union member, is he?

E

1 MR. MC INERNEY: That's right.

2
3 MR. KOELZER: Is that part of this case, your
4 Honor?

5 THE COURT: Why is that relative here?

6 MR. MC INERNEY: Your Honor, this is cross
7 examination. I wanted to establish first what the financial
8 condition of the union is. Wages are going up, pensions
9 are going up, jobs are going down, the seamen can't get
10 jobs and they are not thinking about cutting their compen-
11 sation --

12 MR. DOOLEY: This is what I spoke about yesterday.
13 This man stands here and testifies and the inference
14 remains as to whatever he says.

15 MR. MC INERNEY: There is no inference taken
16 by the Court.

17 MR. KOELZER: I'm sure the Court can handle
18 that, your Honor. I'm not concerned about that part.

19 THE COURT: I will permit it. Let's find out.

20 Q Are you familiar with the motion in San Pedro?

21 A I know the motion was made someplace. I don't
22 know exac-tly if it is San Pedro.

23 Q To increase the dues?

24 A Yes, many motions coming around increasing dues.

25 Q Has there been any talk about reducing the

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March 1975 NMU Pilot Page 17
Dues increase

National Office Minutes

EX.

NATIONAL OFFICE MEETING

January 29, 1975

Present: Shannon J. Wall, President; Mel Barisic, Secretary-Treasurer; James J. Martin, Vice President; Elwood Hampton, Contract Enforcement; Bernard Raskin, Director of Publications. Vice President Bocker in Geneva at ILO/IMCO Conference. Vice President Miller on sick leave.

1. MSC to enter into the record that payment in the amount of \$18,440.40 was made to NMU Realities for the Tampa property of the Union which was condemned by the Tampa Expressway Authority.

2. MSC to enter into the record acceptance by the National Office of the resignation of Patrolman Warren Powell.

3. MSC to accept report of Secretary-Treasurer Barisic concerning changeover to plastic membership plates with revised dues receipt books and new receipt stamping machines. This system will replace the obsolete metal plate system. Secretary-Treasurer explained the procedures by which the changeover is to be accomplished in an orderly fashion.

4. MSC to accept report of Vice President Martin concerning recently concluded negotiations with ABC Management Services, Inc. for ITPE Division members employed in catering and janitorial services on military installations. Substantial gains were made in wages, welfare and associated benefits.

5. MSC to accept report of President Wall on meeting held this morning with the Maritime and Tanker Service Committee rescheduling another meeting on negotiations.

6. MSC to accept the report of President Wall on the Joint ILO/IMCO meeting which he attended in Geneva on international manning standards. Vice President Bocker and Research Director Spector remained in Geneva to cover remainder of sessions.

7. MSC to accept report of President Wall on his participation in the January 25th membership meeting in Baltimore

where he presented the National Office Report.

MSC to adjourn.

Fraternally,
Mel Barisic
Secretary-Treasurer

NATIONAL OFFICE MEETING

February 12, 1975

Present: Shannon J. Wall, President; Mel Barisic, Secretary-Treasurer; Peter Bocker, Vice-President; James J. Martin, Vice-President; Andrew Rich, Regional Representative; Thomas Martinez, Regional Representative; Eugene P. Spector, Research Director; Bernard Raskin, Director of Publications; Talmage Simpkins, Executive Director, AFL-CIO Maritime Committee.

1. The National Office heard a report from Robert Tilove of Martin E. Segal & Co. concerning efforts of many multi-employer pension plans to correct potentially damaging omissions, errors and ambiguities in the Pension Reform Bill as enacted, due mainly to the haste with which it was put through and the inexperience of its drafters. Unions in several industries have established a National Coordinating Committee of Multi-Employer Plans for this purpose. The NMU has been asked to become part of this Committee.

2. MSC to approve the recommendation of Secretary-Treasurer Barisic on the New Orleans Hall be put up for sale as the building and the neighborhood have been deteriorating steadily over the last several years. Survey will be made to locate suitable properties available for rent.

3. The National Office heard the report of Secretary-Treasurer Barisic on the current financial situation within the Union and the need for further retrenchment. Current dues structure does not produce sufficient income to continue maintaining 27 branches. A report prepared by the Research Department for the Secretary-Treasurer

was provided to all National Officers giving an analysis of the current financial situation and future projections.

4. The National Office heard the reports of Vice-President Bocker on the following:

a. Gulf Oil Company vessel docked at Port Arthur where the Machinists Union has put up a picket boat.

b. Situation of Freighters, Inc. and the meetings held with Mr. Alioto and Branch Agent McKinley.

c. Sealift tankers. The Sealift Pacific is docked in San Pedro for 10 days for repairs after the engine room flooded.

5. The National Office heard the reports of Vice-President Martin on the following:

a. Organizing advances in ITPE Division of NMU among contract service workers employed in military and other government installations.

b. Action by NMU to halt Navy practice of charging food service workers for meals whether they desire them or not. With the assistance of Tal Simpkins, NMU was able to persuade the Navy to reverse the policy, effective March 1, 1975.

c. Current situation with regard to NMU crewed Transamerican Trailer Transport vessels now owned by the Government of Puerto Rico.

6. Consideration of communication from Congressman Mario Biaggi concerning his proposed bill which would impose a fine on an employer who knowingly hires an illegal immigrant (first offense) and a jail sentence for the second offense which would be considered a felony. MSC to support the bill because it would protect the jobs of American citizens, stimulate employment of Immigration and Naturalization Service employees and protect illegal aliens against victimization.

7. The National Office heard the reports of President Wall on the following:

a. Meetings in Vera Cruz with Mexi-

NMU Financial Report

EX.

EZ

1 hprf 7

Barisic-direct

2 A Yes, sir.

3 Q And you get the maximum on that, wouldn't you?

4 A I don't think so. I think I have been dis-
5 criminated there because I was a boatswain before I come
6 ashore.

7 Q And Mr. Wall would be entitled to a seaman's
8 pension, wouldn't he?

9 A Yes, sir.

10 Q And Mr. Miller would be entitled to a seaman's
11 pension, wouldn't he?

12 A Yes, sir.

13 Q And Mr. Bocker would be entitled to a seaman's
14 pension, wouldn't he?

15 A Yes, sir.

16 Q And Mr. Strassman, was he entitled to a seaman's
17 pension?

18 A Yes, sir.

19 Q And he is collecting that, too, in addition to
20 the \$200,000.

21 What was the severance pay Mr. Strassman received
22 when he left the union?

23 A I think it was 19 or 14 -- \$19,000. I'm not sure.

24 Q You signed the check, didn't you?

25 A Maybe I did sign the check.

18 We are running against time. But I could handle it any
19 way you like. (2)
20 I will give you an example. After Mr. Curran
21 left the union, there is a bill to the union for a portrait
22 of Mr. Curran, \$6,350. Where that portrait hangs, only
23 the people in the NMU know. I would like to know, myself.

24 There is a bill to Mr. Curran for legal services,
25 personal legal services from Judge Rifkind's firm, \$7,500,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

8. With \$8,023.19 paid for Mrs. Curran's car;
9. With \$10,040.88 - the rental paid for Curran's car after his retirement;
10. With \$3,942.00 - the cost of the rented Cadillac car finally purchased for Curran;
11. With interest on the total surcharge of \$935,127.07 computed from the appropriate dates.

B

The trustees of the OPF should be directed to reduce Curran's pension to \$1,834.41 per month.

Respectfully submitted,

DUER & TAYLOR

By *Arthur E. McInerney*

Arthur E. McInerney
A Member of the Firm

1 hprf 6

Barisic-direct

2 MR. KOELZER: He has had open heart surgery,
3 your Honor, twice. He is under medical care constantly.
4 What do we need to --

5 MR. DOOLEY: Your Honor, he has recently had
6 an operation by Dr. DeBakey in Houston for removal of
7 a carotid artery level, and that is the most recent surgery
8 he had.

9 MR. MC INERNEY: I'm sorry for the conditions
10 of Mr. Snow's health but I am asking what he received from
11 the NMU.

12 THE WITNESS: I don't recollect.

13 Q You know it was over \$50,000, don't you?

14 A I'm not sure, sir.

15 Q And he also received a pension from the NMU
16 Pension and Welfare Fund, didn't he?

17 A Pension and Welfare Fund? If I recollect, the
18 man was in dual payroll.

19 Q He was getting paid from the NMU and getting paid
20 from the NMU Pension and Welfare Fund?

21 A Payroll.

22 Q And retired from the Police Department?

23 A I don't know about the Police Department.

24 Q You are entitled to a seaman's pension too, aren't
25 you, in addition to whatever you get from the union?

ANDY DIEMO
NMU Book S-51380
109-08 Firewood Pl.
Hollis, New York 11412

November 11, 1974

Mr. Al Franco
Director, NMU Pension & Welfare Plan
346 West 17th Street
New York, New York 10011

Dear Al:

As a member in good standing of the Union (NMU Book S-51380), I would appreciate obtaining copies of the Minutes of the Pension and Welfare Plan Trustees' actions in granting a retirement annuity to Alvin Schapiro and in engaging Mr. Schapiro as a paid Consultant.

I would also like to obtain a copy of Mr. Schapiro's Consultantship agreement and a copy of the present NMU Pension & Welfare Plan.

Of course I am willing to bear any necessary expense to obtain these materials and take whatever steps are necessary to copy these documents. Will you please advise me at once as to when I can obtain them, and the standard Union procedure for doing so.

With my thanks in advance for your kind cooperation,

Fraternally,

ANDY DIEMO
NMU Book S-51380

BEST COPY AVAILABLE

was the
quired the increase per capita

A. I told you.

Q. Did you ever report to the membership anything regarding the fact that over \$200,000 a year was going into the AFL-CIO Maritime Committee in 1968?

A. I don't remember, but I am sure I did.

-11- .

Q. What was the form of that report?

A. I think it was reported to a national office; in all probability it was reported to conventions, and no one in the NMU that I know of raised any question against it.

As a matter of fact, we were pressed to try and keep the passenger ships from being laid up.

Q. Was there any reason that the NMU could not have done directly what the AFL-CIO Maritime Committee was doing?

A. I can't answer that question."

Curran said Hoyt Haddock, his life-long friend (since 1937) was executive secretary of the AFL-CIO Maritime Committee and co-director of the Labor Management Maritime Committee. He was compensated by both and was on both pension plans (he was the one who was furnished a Cadillac car by NMU and who went to South America at NMU's expense).

K

B

S

1
2 THE COURT: All right.

3 Q There are subsections here, 1, 2 and
4 the third is a conclusion, is that correct?
5 Is subsection 1, the statements there, are they the product
6 of the discovery before Judge Baonsal?

7 A Yes.

8 Q Subsection 2, is that also the product of the
9 discovery in the case before Judge Bonsal?

10 A No, that is as a result of something I read in
11 the Pilot.

12 Q Do you know what edition of the Pilot offhand?

13 A No, I don't.

14 Q All right. Is there any other source of informa-
15 tion that you had for the allegations you make in that letter
16 of August 2, 1971?

17 A Well, only that I am quite familiar with what
18 happens in this union, I have been a member for 35 years, I am
19 a former official in this union. I have been very active
20 politically in the union for the last ten years, and I have
21 all sorts of information from the members themselves. Off-
22 hand, I can't remember who they are.

23 Q You say --

24 A -- but I spoke with many members.

25 Q You say active politically in opposition to the

1 bsbr

Morrissey-cross

420

2 present administration of the union?

3 A That's right.

4 Q Is there any specific source that you can tell
5 us for your information that you put in that letter, other
6 than the Pilot and the discovery before Judge Bonsal, specific
7 source that you can tell us about now?

8 A Offhand I can't think of another, no.

9 MR. KOELZER: Nothing else, your Honor.. Thank
10 you.

11 THE COURT: Thank you.

12 Any redirect examination?

13 MR. MC INERNEY: No, your Honor.

14 THE COURT: All right. Thank you, Mr.
15 Morrissey.

16 (Witness excused.)

17 MR. MC INERNEY: I would think, your Honor,
18 that the letter that was referred to should be marked in
19 evidence. If the defendants aren't going to offer it I
20 will.

21 THE COURT: All right.

22 MR. MC INERNEY: Are you going to offer it?

23 MR. KOELZER: Your Honor, it is not my case.
24 I can't offer anything at this time.

25 MR. MC INERNEY: Sure you can.

III

3/11/75

To perhaps it may concern I
 Frank Arnold was in the union
 hall today on 346 west 17th St
 and I was approached by Andy
 Rich part agent of New York
 that ask me to Retrack my
 statement pertaining to being in
 Baltimore, As the ~~CA~~ court order
 stated, Impealing the Law suits
 against the N.M.U. He further stated
 that he got two other people to
 change their statement)

But I refuse to Retrack my statement & despite
 pressure from Rich. } Frank Arnold
 III

National Office Minutes

NATIONAL OFFICE MEETING

September 12, 1975

Present: Shannon J. Wall, President; Mel Barisic, Secretary-Treasurer; Peter Boker, Vice President; Rick Miller, Vice President; Thomas Martinez, Regional Representative; Elwood Hampton, Contract Enforcement; Andrew Rich, New York Branch Agent; Bernard Raskin, Director of Publications; Stanley B. Gruber, representing General Counsel.

1. MSC to accept the report of Secretary-Treasurer Barisic on the following:

- Meeting of the Retrenchment Committee in Galveston with Branch Agents of New Orleans, Mobile, Corpus Christi, Houston, Galveston and Port Arthur. There was a discussion of Union operations, finances, programs and further retrenchment possibilities.
- Trip with Agents of the branches in Texas to study possibility of La Porte as a location for an NMU Hall. Secretary-Treasurer's opinion is that La Porte presents problems of accessibility for membership and other disadvantages. Recommendation is that necessary repairs be made to Houston Hall and existing halls to be maintained in Houston and Galveston and consideration of move to La Porte be put aside at this time.
- Meetings with membership in Norfolk and Galveston with full discussions of programs, problems and questions.
- Recommendation that similar meetings be held from time to time on regional basis in all areas covered by the Union for regular contact between National Officers and membership.

2. MSC to approve payment of National Maritime Council 1975 first quarter dues assessment in the amount of \$50.00.

3. MSC to approve payment of

\$1,398.60 for three, 3-year insurance policies providing insurance for the Union fiduciaries of the NMU Pension & Welfare Plan (Welfare Fund); NMU Pension Trust; NMU Vacation Plan and NMU Upgrading and Retraining Plan.

4. MSC to approve the following disbursements from the Good Causes Fund:

- Frank Fitzsimmons Scholarship Fund at Little City (training community for mentally retarded children) \$ 600.00
- ILWU Harry Bridges Testimonial Dinner (1 table) 500.00
- Guard of Honor Ball—Robert L. Hague Merchant Marine Industries Post No. 1242, American Legion (dinner honoring Rep. Leonor K. Sullivan) 350.00
- Tapinta Foundation (South St. Seaport Labor Day Festivities) 100.00
- St. Laure Indian School 150.00
- Friends of Connie Woodruff (United Negro College Fund) 100.00
- Village of Mamaroneck Bi-Centennial Fund 25.00
- Second Baptist Church (Banquet honoring Elwood B. Hampton Mayor of Paulsboro, New Jersey) 300.00
- Testimonial Dinner Dance honoring Max Greenberg, President of the RWDSU (proceeds to go to Histadrut's Health, Welfare and Educational programs [4 tickets]) 300.00
- Guardian Angel Church (The Shrine Church of the Sea) 100.00
- Maritime Training Advisory Board (dinner sponsored by NMU) 1,500.00
- March of Dimes fund raising project honoring I. W. Abel 500.00

5. MSC to approve contract with Service Equipment and Maintenance Co., Inc. for replacement of defunct cooling tower in New Orleans hiring

hall at a cost of \$1,618.62.

6. MSC to approve contract with Dennis F. Casey, Inc. to replace air filters, oil equipment and check belts of the air-conditioners and heaters in the Branch of Philadelphia hiring hall 12 times a year at a cost of \$415.00.

7. MSC to approve purchase of one new mimeograph machine for headquarters as replacement parts are no longer available for the 25-year old machine now being used.

8. MSC to approve purchase of two new water cooler units for the Branch of Baltimore at a cost of \$781.00 including labor, per estimate submitted by the J. G. Martin Company.

9. MSC to approve purchase of a new photostat machine for the Branch of Pittsburgh at a cost of \$1,520.00 plus \$150 for maintenance.

10. MSC to approve replacement of NMU sign on Norfolk building.

11. MSC to approve replacement of broken glass at New Orleans Hall at a cost of \$109.71.

12. MSC to accept the report of Vice



NMU Financial Report

NMU statement of income and expenses of the C Branches and National Headquarters for the month

OPERATING RECEIPTS

OPERATING EXPENSES

Branches	Dues Collected	Initiation Fees	Service Fees	Servicing and Interest Income, Books, Plates, Misc.	Total Receipts	Salaries and Expenses
NEW YORK	54,675	4,300	3,045	135	62,155	47,201
BALTIMORE	4,325	1,650	490	9	6,474	7,004
BOSTON	8,260	1,650	525	108	10,543	5,932
CHARLESTON	2,845	300	35	65	3,245	3,580
CHICAGO	2,625	550	180	2	3,357	3,988
CORPUS CHRISTI	1,760	300	210	15	2,285	3,968
DETROIT	1,895	950	180	—	3,025	4,078
GALVESTON	6,680	600	175	10	7,465	4,558
HOUSTON	9,600	900	315	30	10,845	7,305
JACKSONVILLE	1,875	450	250	8	2,583	5,113
JOLIET	3,050	1,650	1,715	96	6,511	3,003
LUDINGTON	3,745	—	140	—	3,885	3,024
MIAMI	2,760	300	140	30	3,230	4,093
MOBILE	2,080	—	350	3	2,433	3,648
NEW ORLEANS	16,670	1,050	420	65	18,205	13,938
NORFOLK	4,360	300	—	38	4,698	5,778
PANAMA	871	—	—	—	871	5,067
PHILADELPHIA	8,280	650	635	8	9,573	6,838
PITTSBURGH	2,660	450	700	—	3,810	6,379

period of government protection of the right to organize and bargain collectively as provided by the Wagner Act of 1935.

By 1900 racketeering was revealed in the building trades, longshoremen, and teamsters unions. Graft, violence, extortion, and mishandling of funds by union leaders are some practices reported in these organizations. Labor organizations were also criticized for improper use of trusteeships, discrimination against Negroes by barring them from membership or placing them in separate auxiliary locals, and lack of disciplinary protection of members.³

Scrutiny of union activities was intensified after World War II. In 1954 Congress began investigating the administration of employee benefit plans. Discovery of widespread abuses in the labor field led to the creation of the Senate Select Committee on Improper Activities in the Labor or Management Field, better known as the McClellan Anti-Racketeering Committee. Between 1957 and 1959 the McClellan committee held numerous hearings dealing with patterns of union behavior. Several findings and recommendations were presented as a result of the three-year effort.

McClellan Committee Findings and Recommendations

The labor movement anticipated government intervention into its internal affairs. In 1957 the AFL-CIO adopted a series of six codes of ethical practices to regulate the behavior of its affiliates. The codes dealt with paper locals, health and welfare funds, subversives and racketeers, business interests of union officials, union financial and proprietary activities, and union democratic processes.⁴ The self-regulated effort proved too late. The McClellan committee, after many hearings and thousands of pages of testimony, uncovered these facts:

1. Rank-and-file members have no voice in union affairs, notably in financial matters, and frequently are denied secret ballot.
2. International unions have abused their right to place local unions under trusteeship by imposing the trusteeship merely to plunder the local's treasury or boost the ambitions of candidates for high office.
3. Certain managements have bribed union officials to get sweetheart contracts or other favored treatment.
4. Widespread misuse of union funds through lack of adequate inspection and audit.
5. Acts of violence to keep union members in line.
6. Improper practices by employers and their agents to influence employees in exercising the rights guaranteed them by NLRA.
7. Organizational picketing misused to extort money from employers or to influence employees in their selection of representation.
8. Infiltration of unions at high levels by criminals.
9. A no man's land in which employers and unions could not resort either to the NLRB or state agencies for relief.

On the basis of the findings the McClellan committee recommended legislation to deal with abuses in five areas. They were:

1. Legislation to regulate and control pension, health, and welfare funds.
2. Legislation to regulate and control union funds.
3. Legislation to insure union democracy.
4. Legislation to curb activities of middlemen in labor-management disputes.
5. Legislation to clarify the no man's land in labor-management disputes.⁵

Some of the 1959 law and are broad and ambitious

BI

Senator McClellan written into the 1959 law and other improper practices prevented

until and unless to enact laws for the administration

The resulting one. It attempts basic rights contained in the 1959 law. I provides for equal office, voting in elections, business transactions" as contained in the law to ensure that increased membership major "reasonable" hearing is also made that the union except for procedural safeguards prepare a defense, furnish each of the as well as full information

Considerable 1959 law. The union should function in standard be imposed apathetic to internal collective bargaining when there is a weak could have been re internal democracy

Congress intervened more fully in matters it recognized the unioning matters. Union with an employer, "reasonable" union rule

DUER & TAYLOR
COUNSELLORS AT LAW
74 TRINITY PLACE
NEW YORK, N.Y. 10006

JOHN S. CHAPMAN, JR.
ARTHUR E. MCINERNEY
FREDERICK M. SCHLATER
ROBERT J. WOOLSEY

TELEPHONE: WHITEHALL 4-7452
CABLE ADDRESS: "DULORITE"
JOHN F. WOODS, COUNSEL

December 10, 1973

Honorable Robert L. Carter
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: Morrissey, et al v. Curran, et al
73 Civ. 204 (RLC)

Dear Judge Carter:

This letter is written in response to the letter of Charles Sovel addressed to you under date of December 6, 1973.

The partial answers to the interrogatories admit that a total of \$963,506.51 was charged by various individuals on various credit cards and paid by NMU between 1967 and 1972. Such charges include \$445,318.04 to United Airlines, \$161,553.40 to American Express Company, \$133,996.36 to hotels and \$126,899.46 to Dealers Leasing Corporation. The answers to the interrogatories do not reflect the name of the person who incurred each such charge, the nature and purpose of each item charged or whether or not the payment of each such item was reflected in the LM 2 form filed with the Secretary of Labor [29 U.S.C. § 431 (b)(3) and (6)]. The information sought does not appear on the LM 2 forms filed.

29 U.S.C. § 431 provides in applicable part:

"(b) Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail, as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year--

* * *

(3) salary, allowances, and other direct or indirect disbursements (including

P.

(e) Whether you contend that such trips were not related to the business of the NMU Deep Sea Fund. And, if so, the reason for such contention.

ANSWER

(e) It was not related to the business of the Deep Sea Fund. The trip was not a legitimate expense of the trust. The salaries of the Administrator and the compensation of the Trustees was excessive. One example of this is the prepayment of pension benefit on or about June 20, 1968 of \$201,820.58 and I am informed a payment of approximately half a million dollars by American Export Line which was never received by the Deep Sea Fund.

(f) What other improper, unlawful and excessive expenditures were made from the NMU Deep Sea Fund as alleged in Paragraph 23 besides the trips aboard. State the amount of such expenditures, to whom made and when made.

ANSWER

(f) I am informed and verily believe that there were many and varied improper expenditures, for example that there was payment made by American Export Line in the sum of \$500,000 in 1968 which was never accounted for in the Fund. Another example were the unwarranted and excessive disbursements made to and for the account of Alvin Shapiro, in addition there were improper and improvident trust investments.



An Alleged Gift by N.M.U. To Ford Splits 2 Agencies

U.S. Attorney and I.R.S. Are Disputing the Handling of Charge of N.M.U. Gift to Ford

The United States Attorney for New Jersey and the Internal Revenue Service have become embroiled in an intense dispute over each agency's handling of an allegation that Gerald R. Ford may have received an unusual payment from leaders of the National Maritime Union around 1968.

The prosecutor, Jonathan L. Goldstein, is investigating whether the I.R.S. failed to pursue the allegation after it was made, apparently in early 1974, by a former leader of the union. At the same time, the I.R.S. says it acted "appropriately." And some officials of the tax agency contend that the United States Attorney's office had known of the charge by the fall of 1974 and had dismissed it out of hand.

Neither Mr. Goldstein's office nor the I.R.S. is believed to have any evidence at this stage that the alleged transaction involving President Ford when he was a Congressman ever occurred. Nor has any such evidence emerged in a detailed investigation by The New York Times.

What has developed, however, is a conflict over the treatment of the allegation between two Government agencies that, in a post-Watergate atmosphere, are particularly sensitive to any charge of a cover-up.

An anatomy of their conflict, which comes during a period of heightened public and Congressional interest in the integrity and techniques of Federal investigative agencies, illustrates how two major law-enforcement agencies—ostensibly working together—can come to challenge each other's motives, actions and memory.

The story has two threads that often intertwine.

The first is the allegation by William Perry, then administrative assistant to the president of the National Maritime Union, that approximately \$2,000 had been raised, in cash, through a union attorney to be given to Mr. Ford or someone acting for him.

Sources in both the I.R.S. and the United States Attorney's office said that Mr. Perry did not know whether Mr. Ford ever received the money and that he had no written evidence to document any part of the alleged transaction, which, if it occurred, might have been an illegal use of union funds.

Ron Nessen, the White House press secretary, said yesterday that the President had "absolutely no recollection" of having sought a campaign contribution around 1968 from the union—or from union leaders mentioned by Mr. Perry as having been involved in the alleged transaction—and "no specific recollection" of having received a donation. Nor, Mr. Nessen said, has any record been found to indicate that such a contribution was made.

The second, and more complicated theme is how the I.R.S. and Mr. Goldstein's office handled the allegation, which seemed to demand immediate close attention simply because of the possible involvement of Mr. Ford. Both agencies have a mandate to investigate such a charge and a deliberate affirmative decision not to do so could constitute obstruction of justice.

"We don't know yet whether there was a cover-up in I.R.S. on the Ford thing or just an administrative foul-up," a Federal prosecutor said recently. "Maybe some people in I.R.S. thought things were being taken care of that may not have been done."

Tax Agents Critical

An I.R.S. source offered a similarly critical view of the prosecutor's office. Goldstein's assistants knew for a long time what Perry was saying about the money for Ford, he said. "But they thought that Perry was just name dropping and they wouldn't follow up. Meaning we did what we could."

In Washington, a senior I.R.S. official said on behalf of Commissioner Donald C. Alexander that the tax agency had taken "appropriate action" with regard to Mr. Perry's allegation. He declined to elaborate.

It is generally agreed that Mr. Perry, who was the administrative assistant to Joseph Curran, the president of the National Maritime Union, from 1958 to 1969, actually ran the union in the late nineteen-sixties. For the last two years, Mr. Perry has been a key figure in a joint investigation by Mr. Goldstein's office and the I.R.S. in New Jersey of alleged corruption in the union.

Account by Perry

According to Government sources, Mr. Perry has given the following account of the supposed transaction relating to Mr. Ford:

In or around 1968 Alvin Shapiro, who was the administrator of the union's pension fund from 1966 to 1972, came to Mr. Perry and said that a certain amount of money was needed for Mr. Ford, who was then a minority leader of the House of Representatives. (Some sources said the figure cited by Mr. Perry was \$2,000; others said it was slightly less.)

Mr. Perry, by his account, took the request to Charles Sovel, a union attorney whose office was in the union headquarters then at 36 Seventh Avenue, and Mr. Sovel gave the cash to Mr. Perry to forward to Mr. Shapiro.

Mr. Perry, in turn, gave the cash to Mr. Shapiro, believing it would be passed on to Mr. Ford. (Some sources quoted Mr. Perry as having said that Mr. Sovel took the money from a cash box; others had Mr. Perry saying that Mr. Sovel wrote a check on some account and asked the check at the Amalgamated Bank of New York on Union Square.)

Mr. Perry, according to the sources, said he did not know what actually happened to the money after he gave it to Mr. Shapiro. He assumed the money was simply meant to ingratiate the union with an influential Congressman, the sources said.

Declines to Comment

Other than saying that he had never given more than a minuscule amount of his own money to any politician, Mr. Sovel declined to comment on any matter concerning the Government's investigation of corruption in the union. Part of the investigation, Mr. Goldstein has said in court, centers on charges of "kickbacks" and "corruption" between officials of the union and members of the firm of which Mr. Sovel is a partner.

Mr. Shapiro denied, however, that he was ever involved in making donations, by or through the union to Congressmen, including Mr. Ford.

"I never had anything to do with that kind of thing," he said, adding that he himself had never given more than \$25 to any politician. Since

July Mr. Shapiro has declined to be interviewed—on the advice he said of present union leaders. Before he became administrator of the union's pension fund, Mr. Shapiro was head of the Washington office of the American Merchant Marine Institute.

Mr. Perry, who is now believed to be organizing hospital workers, also declined to comment. But he was understood to have said that Mr. Goldstein's office knew of his allegation relating to Mr. Ford at least several months prior to the time now acknowledged by the United States Attorney.

According to Mr. Perry's lawyer, Arthur Ollick, Mr. Perry began talking to I.R.S. agents in 1972 or 1973, and subsequently to Federal prosecutors in Mr. Goldstein's office, because the 49-year-old Polish immigrant, who changed his name from Wolf Kozminski, wanted "vengeance" against some of his former union colleagues. It has never been clear whether Mr. Perry left the union voluntarily or was forced out.

Mr. Ollick said that Mr. Perry had also been worried about the consequences to himself of various Federal inquiries in Manhattan and Brooklyn into corruption in the union. Since he left the union, Mr. Perry has been involved in a continuing controversy over the nearly \$400,000 he was paid in severance and pension benefits.

Sources in Mr. Goldstein's office said that Mr. Perry's relationship with I.R.S. intelligence agents stretched back even farther than 1972 and that he had been an "informant" for the I.R.S. for about six years.

No Immunity Granted

Around the beginning of 1974, Mr. Goldstein's office obtained authorization from the Department of Justice to immunize Mr. Perry from prosecution in exchange for his cooperation in the union investigation, but the grant of immunity was never exercised. And, over a time, a conflict developed between the prosecutors and I.R.S. agents over whether Mr. Perry was trying to rush or "control" the Government into action and whether the information he provided could be corroborated and result in indictments within the statute of limitations.

Moreover, it is believed that, as early as mid-1974, the United States Attorney's office asked I.R.S. officials in Newark to reassign a key I.R.S. agent on the union case, Robert Rossi, because he had become "too personally involved" with Mr. Perry. The request was said to have been rejected—without Mr. Rossi's knowing that it had been made.

Mr. Rossi, who was finally taken off the case at Mr. Goldstein's request when the prosecutor began his current inquiry a few months ago, was understood to have said recently that he had been repeatedly told by Federal prosecutors in the last year not to talk to Mr. Perry.

'Payments' Reported

Government sources said that Mr. Perry had told the I.R.S., if not the United States Attorney's office as well, of "payments" by the union to a number of political figures with money raised from outside the union's Fighting Fund, its regular fund for legal political contributions.

I.R.S. sources said that Mr. Perry first referred in early or middle 1974 to the alleged transaction relating to Mr. Ford. But Mr. Goldstein said that he learned about the allegation only after he was approached by The Times last April.

prosecutors had passed on the information to Mr. Goldstein.

Mr. Goldstein, whose office is widely regarded as one of the toughest anticorruption arms of the Justice Department, has now demanded all I.R.S. documents relating to Mr. Perry's statements and has begun interviewing I.R.S. officials in New Jersey and Washington. Commissioner Alexander is reportedly on the list of those being interviewed.

For the first time in the union investigation, a Federal grand jury has been convened to hear evidence of any corruption among present and former leaders of the union. A large volume of records has been subpoenaed from Mr. Sovel's law firm but, so far, the firm's senior partner, Abraham D. Freedman, has defied a court order to produce the records, the alleged Ford transaction.

According to I.R.S. sources, Mr. Perry's first mention of the alleged Ford transaction came during a restaurant meal with Mr. Rossi and another I.R.S. agent, Roy Martin.

Informed Superiors

Following that meeting—it is not clear how much time elapsed—Mr. Rossi informed his superiors in New Jersey that Mr. Perry had implicated Mr. Ford in what might be an illegal act, I.R.S. sources said.

And, eventually, the sources said, a meeting to discuss the alleged transaction was held in a conference room in Mr. Goldstein's office in the Federal Building in Newark, several flights below the I.R.S. headquarters for New Jersey.

Mr. Perry, according to the sources, attended the meeting and, in response to questions, explained the alleged Ford transaction. In and out of the meeting, the sources said, were two Federal prosecutors, Lawrence Horn and Richard Tanner, then head of the criminal division.

The two prosecutors concluded that Mr. Perry was merely "name dropping," the I.R.S. sources said.

Sources in Mr. Goldstein's office said that a meeting with Mr. Perry and I.R.S. agents was held last October in the prosecutor's office. But they said that neither Mr. Horn nor Mr. Tanner had ever heard Mr. Perry make an allegation involving Mr. Ford or had ever been informed by the I.R.S. that such an allegation had been made. And, these sources said, the I.R.S. records of the meeting do not indicate that Mr. Ford's name was mentioned.

I.R.S. sources said that Mr. Ford's name had been omitted from the records of the meeting because the matter was "too sensitive to be put into writing."

Whatever the conflict regarding the meeting, it is undisputed that sometime in the second half of 1974, and apparently after the meeting, two I.R.S. agents from Washington came here to interview Mr. Perry on the issue of political payments. The agents are believed to have come in response to a telephone call from Mr. Martin.

A Direct Contact

The two agents were James J. Lane, then the coordinator of the secret, "top priority" I.R.S. program on political campaign contributions, and Robert Sher, who worked with Mr. Lane at the I.R.S. national headquarters. Mr. Lane ordinarily reported to the Assistant Commissioner for Compliance, who, in 1974, was John F. Hanlon, who was then in command of the campaign contributions program reported directly to Commis-

sioner Alexander.

Mr. Lane and Mr. Sher met with Mr. Perry twice—first at Mr. Perry's office on Madison Avenue and, perhaps a month later, in Newark. On neither occasion did the I.R.S. agents from Washington contact Mr. Goldstein's office. I.R.S. sources said that Mr. Perry discussed the alleged Ford transaction at both sessions and also alleged payments of questionable legality to the union to a half-dozen other political figures.

After the first or second meeting, Government sources said, Mr. Lane wrote, and for "security reasons," hand-carried a handwritten memorandum on Mr. Perry's allegations to Mr. Hanlon. The sources said it was "clear" in the memo that one of Mr. Perry's allegations related to the President. The memo, they said, recommended a course of action "other than dropping the matter."

I.R.S. sources said that Mr. Hanlon had informed Commissioner Alexander of the contents of Mr. Lane's memo and that, in some fashion, the matter had ultimately been referred back to the I.R.S. in New Jersey for investigation. The I.R.S. does not normally conduct full-scale investigations from its national office and it was adhering to that procedure in this case, the sources said.

However, Mr. Hanlon, who retired last January and is now office manager of the Washington law firm of Covington and Burling, said he did not recall ever knowing about Mr. Ford's alleged involvement in the matter. "I'm sure I would remember," he said.

Both Mr. Lane and Mr. Sher declined to be interviewed. But when Mr. Lane, who has been an official of the I.R.S. intelligence division in Miami since last February, was asked to comment on the Ford matter, his face broke into a great sweat that his determined vigil could barely control. The agent asked whether the Watergate prosecutors' office had been queried on the matter.

Sources close to the Watergate prosecutors' office categorically denied any knowledge of the alleged Ford transaction by that office. Moreover, they noted that, since the supposed transaction took place before 1972, the Watergate prosecutor would not have had jurisdiction. Some Government sources said that Mr. Lane had tried twice to arrange a third meeting with Mr. Perry, but that Mr. Rossi had canceled one of the planned sessions on behalf of Mr. Perry and Mr. Perry himself had canceled the other. Mr. Rossi is understood to have said that he did not cancel any meeting with Mr. Lane and that he never spoke to, or saw, Mr. Lane after the second session with Mr. Perry.

Another conflict centers on a conversation last August between Mr. Rossi and Mr. Lesnovich, the prosecutor who was then in charge of the union case and who has now left Mr. Goldstein's office.

Sources close to Mr. Rossi said the I.R.S. agent had gone to Mr. Lesnovich and urged the United States Attorney's office to act on the Ford matter and also to convene a grand jury to hear evidence of other corruption in the union. Mr. Rossi, the sources said, told Mr. Lesnovich that the Government had 90 per cent of tax-evasion cases against union leaders and could obtain the other 10 per cent before a grand jury.

Mr. Lesnovich, according to Government sources, recalls the conversation differently. The prosecutor was quoted as having said that the conversation was the first and only time

he ever heard anything about an allegation by Mr. Perry concerning Mr. Ford and that Mr. Rossi was vague about the union action and brushed it aside, saying that the matter was being handled by a special political campaign unit in the I.R.S. in Washington.

Before Mr. Rossi was removed from the union case last April, sources close to the agent said, Mr. Rossi opened a file on Mr. Shapiro as a step toward investigating the alleged Ford transaction. Last May the agent underwent long-scheduled open-heart surgery, and he returned to the office only a month ago.

Federal prosecutors do not seem to be at least yet, though open file on Mr. Shapiro constituted active pursuit of the Ford matter. "I'm not saying there is or there isn't a file," a prosecutor said. "But there's a difference between opening a file and assigning a number and doing something about it."

Mr. Rossi was said to have felt that the alleged Ford transaction, if true, might well have been illegal and that the money supposedly used to raise the funds had been designed to be the origin of the money from Government authorities.

But the legality of such a transaction, on either the giving or receiving ends, is a complicated issue that could take Federal officials with the power to subpoena documents as much as a year or more to settle—if they first conclude that a transaction did occur.

Under Federal laws, unions and their officers are prohibited from making donations with general union funds "in connection with" any election for Federal office. In some cases these laws have been interpreted as barring any payment from general union coffers to Federal officials, except in return for such services as speaking at union meetings. And such payments have to be declared as income by the Federal officials.

Then, as now, it was illegal for candidates for Federal office to accept knowingly or illegally contribution from a union, as from a corporation. In practice, many unions have given to political campaigns from special funds made up of "voluntary" donations by union members. In the National Maritime Union that fund, in the nineteen-sixties, was called the Fighting Fund—it is presently known as PLOW Political and Legislative Organization on Watch.

But, according to Milton Breit, the union's controller, only particular officers of the union—not including union attorneys—were ever authorized to write checks or otherwise draw from the Fighting Fund. Mr. Goldstein's office is said to be examining the apparent transfer of more than \$200,000 from the union's general account at the Amalgamated Bank to its Fighting Fund account at the same bank between 1968 and 1970. Some of these funds, union records indicate, were paid to union officers.

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Future Control

The judgment should direct that the Court appoint a "watch-dog" committee to supervise the expenditure of NMU funds and to see to it that the terms of the settlement and judgment are observed.

Hon. William C. Conner

-5-

March 10, 1976

H

The Pilot

The terms of this settlement must be published in the Pilot as well as the result of the determination of the actuary and of the auditor.

I

The AFL-CIO Maritime Committee

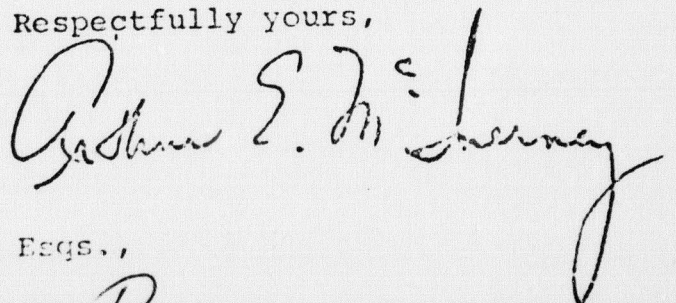
The defendants must account to the union for all sums paid by the union to the AFL-CIO Maritime Committee.

Note: Mr. Curran was Executive Director of this committee. There were payments out of the NMU General Fund well in excess of \$200,000. a year in some years to such Committee and in slightly lesser amounts in other years. We were not aware of these disbursements from General Funds until we examined the books in the United States Attorney's Office and we were not aware of Mr. Curran's position in such organization until we heard such testimony from Mr. Perry. We intend to explore this area during the continued discovery and present evidence on it (should the discovery prove it is warranted) when the trial resumes on April 12, 1976.

The acceptance by the defendants of the foregoing terms will dispose of all issues except those in which Curran items and the Perry contract are involved; and except for reimbursed expenses not recorded on LM-2 forms. Discovery on these items is still under way.

We repeat, our sincere appreciation for your Honor's efforts.

Respectfully yours,



AEM:MM

cc: Stanley B. Gruber, Esq.,
Feder, Kazowitz & Weber, Esqs.,
George J. Keelzer, Esq.,
Mr. William Perry

R

Q. May 6, '69.

MR. KOELZER: How do you arrive at that amount, or how was that amount arrived at, if you know?

THE WITNESS: I just don't know, to tell you the truth. I just don't know.

* * *

A. This could have been a quarterly payment of the per capita of the IMU."

He said at pages 41-43:

"Q. Do you make reports under the Regulation of Lobbying Act?

A. I make four quarterly reports.

Q. I ask for the production of those reports for the years 1967 forward.

MR. KOELZER: What purpose does that serve? In the context of this lawsuit, what purpose in the world can that serve?

MR. McINERNEY: Well, to answer your question, Mr. Koelzer, I thought I was to be asking questions, not answering them. But to answer your question, we have sums of money in excess of \$100,000 a year going into these committees.

MR. KOELZER: Into what committees?

THE WITNESS: Wait a minute now. What committees?

MR. McINERNEY: The AFL-CIO Maritime Committee.

5 - -
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ation to require a percentage of all oil imported into the United States be carried on American-flag vessels. The hearings began with Administration witnesses who, as we anticipated, opposed this legislation. NMU, and other industry witnesses, will be testifying in the very near future to refute the Administration's arguments. We believe we can convincingly demonstrate the value of this legislation not only to the American merchant marine but to the entire country as well.

Trophy vessels

The USNS Schuyler Otis Bland, which is under operational control of MSC Pacific, also won a Gano Trophy.

The McGraw was skippered by Captains Carroll E. Bura and George H. Violante during the past year. Captain Harold A. Slusher has been master of the USNS Bland since August 1971.

Admiral Gano commanded MSC from 1959 until his retirement from the Navy in 1964 after 38 years of service.

nessmen would ship more cargo on American flag ships.

EX- NMU completes move to new headquarters

The move of National Headquarters and offices of the NMU Deep Sea Pension and Welfare Plan, an operation requiring the precision and logistical preparation of a military campaign, was completed the last weekend in October. The new address is 346 West 17th Street, New York, N. Y. 10011.

All the vital operations of the Union and various benefit plans continued without interruption during the transfer. The hiring hall was open for business as usual with seamen using the Ninth Avenue entrance of the Joseph Curran Plaza building for this purpose.

The hiring hall is located in the Grand Hall, two flights below the plaza level and on the same level as

NO MENTION OF LOSS
the Dispatcher's cage. Overlooking the shipping boards on the mezzanine level are the offices of the Branch Agent and Patrolmen.

Until alterations are completed in the 17th Street building, offices of the National Officers, General Counsel, Research Department, Government Operations and The PILOT will be located in the Ninth Avenue building. Pension and Welfare claims offices are in the 17th Street building.

A cafeteria is located on the fourth floor of the building at 346 West 17th Street and will be open to the membership for breakfast and lunch from 8 A.M. to 3 P.M. daily. Chief Steward Arthur (Bob) Bloom offers a typical breakfast of bacon and eggs, potatoes, toast and coffee for \$1.42.

The cafeteria policy is "no-profit, no-loss" and the price scales are tentative, to be adjusted according to experience.

After the move is over and renovations completed the Upgrading and Retraining School will reopen with a restructured program geared to the needs of the latest ships being built.

NMU Pilot November 1975 Page 7

New York Meeting 1/29/73

"Now I spoke to Shannon after reading this and of course on the six million figure he has already told St. Vincent's that they would have to come up with some more money. Now the proposal is that the 'NMU National Office is empowered to negotiate with St. Vincent's Hospital for the sale of the NMU Headquarters Building at 36 Seventh Avenue, New York City, and after thorough consideration of the Union's needs and any alternative proposals, to take such action as it believes will best serve the Union's interest.'

This empowers them to go in there to negotiate and of course the Constitution is perfectly clear on it but just so there won't be any rebuttal, no stigma, no hint, no overtones of any skull duggery, we are bringing it to you to tell you where things stand. Now is there a motion to empower the National Office to carry out this? Is there a second on it?"

Motion passed and seconded to accept proposal.

Discussion.

Eugene Herson Book # 51454: "What we're discussing here is more than simply a matter of bricks and steel. The sale of this building, the whole thing was based on the change in the shipping situation and before we get rid of the building, before we start junking things and start throwing a lot of our dues over the side like it was dunnage, we ought to think about what this represents. It represents the fact that the National Office has accepted the fact that we've lost jobs and refuse to fight for those jobs. That's what the sale of this building represents. EX.

EX.

Building Expense no report

NATIONAL MARITIME UNION OF AMERICA
REAL ESTATE
(LAND, BUILDINGS AND IMPROVEMENTS)
JUNE 30, 1973

Property Held in the Name of Trustees for
the Benefit of the National Maritime
Union of America:

New York, New York, 36 Seventh Ave.
(Note 4)

7,431,555.60	1,114,167.98	6,317,387.62
\$10,261,996.64	\$1,728,961.46	\$8,533,035.18

NOTE 4 - Real Estate

✓ The Union's real estate comprises land and buildings for the exclusive use of the Union and its related employee benefit plans. Depreciation has been provided on each building at rates of 2% and 3% per annum.

At October 31, 1973 the Union completed the sale of its national headquarters building, located at 36 Seventh Avenue, New York, N.Y. for \$6,000,000.00. The loss on sale shown at Schedule "A-4", was computed as follows:

Cost of Property (Net of \$1,161,737.13 Accumulated Depreciation)	\$6,269,818.47
Expenses of Sale	10,350.00
	6,280,168.47
Less: Sales Price	6,000,000.00
LOSS ON SALE OF HEADQUARTERS BUILDING	\$ 280,168.47

(continued)

KIRNIS & KARCHMER

Page 45

NATIONAL MARITIME UNION OF AMERICA

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 1974

(concluded)

NOTE 8 - continued

Increase in Cash Accounted for as Follows:

Excess of Cash Expenses Over Income (Per
Exhibit "B")

\$ (509,5

Other Receipts:

✓ Sale of Headquarters Building (Net of
Prior Year Deposit and Expense of Sale)

\$5,943,400.00

✓ Leasehold improvements at the new national headquarters and the New York port offices were made during the year at a total cost of \$587,576.67. These are being amortized over the 5-year term of the lease. The amortization charge for the current year was \$78,344.00.

EX.

Contract | would add the fact that the National Maritime Union of America (NMU) interposed an Answer to a suit brought by William Perry in the New York State Supreme Court in which Mr. Perry sought to obtain a judgment against NMU for a total sum in excess of \$322,000, which consisted of his claim that he was entitled to \$222,200 from NMU plus \$100,000 in taxes. The said Answer NMU filed contained the admission that the Perry contract was illusory and that approximately \$175,000 had been paid to Mr. Perry in error. I would add, that on its face, the Perry contract did not bind Mr. Perry to do anything. Finally, I would say that there is no complaint made for the payments made under the said contract for services actually rendered. The complaint regards the payment for a period after January 16, 1969. P.L.

Expenses | led the way, the others were not far behind. In reviewing the records in the possession of the U. S. Attorney (supra) one would begin to wonder whether any one of the officials has bought a cheese sandwich out of his own pocket in the last ten years. Every conceivable charge is made to the union. These range from liquor charges to traffic summons'. The most common charges are for lunches, dinners and hotels. No one it seemed escaped the rigors of having to go to Panama, Florida or Puerto Rico during some winter. Then there were the "necessary" trips to New Orleans, Hawaii, Europe, Israel, The Far East. All at the expense of the seamen - who never realized that their money was being thrown P.L.

Source Info. | (b) On information and belief, well in excess of \$100,000, the source of my information is the NMU records which I have had examined and am examining. These records are for the most part in the United States Attorney's office in Newark, New Jersey. The fact that the records are located there is a mixed blessing. It makes the examination of P.H.

NMU Pilot July, 1975. Page. 22.

Union battles in Washington for active member and pensioner, too

WASHINGTON—The well being of our members and their families was of prime concern to President Shannon Wall as he negotiated and delivered one of the best contracts in the history of our Union. Now it is up to all of us to keep up the fight on the political front so that we may reap the benefits of this contract.

There are forces in Washington and elsewhere that are continually at work against the American merchant marine. A case in point is the recent number of negative votes against the authorization of appropriations for fiscal 1976 for certain maritime pro-

grams, which include construction and operating subsidies.

In the last three years there have only been a handful of Congressmen voting against the legislation. But on May 12, 1975 there were 59 Congressmen who voted against legislation which is so vital to the American merchant marine, and we are worried about this trend.

We have approximately 14,000 members on pension who are living in all parts of the world and they can have a strong political impact on legislators in Washington. You must let your legislator know about the ob-

vious need for a strong American merchant marine in times of war, times of peace, and in national emergencies.

Every pensioner at one time or another has been involved in a going political fight to save our Merchant Marine. We are talking about experienced fighters. We would hear from you when you receive letters from your Congressmen orators. We would like to have your suggestions on how to carry on this never ending battle.

We must never forget that the National Maritime Union, along with the rest of the American labor movement, is continually working on behalf in Washington. Not only the American merchant marine legislation that affects pensions, education, taxes, and social programs that affect you and your families.

Below is the list of Congressmen who voted against H.R. 3902, which would effect vote against the American merchant marine. Write and let them know your views.

James Abner (R) Washington; William L. Armstrong (R) Colorado; Robin Beard (R) Tennessee; J. B. Bedell (D) Iowa; Garry Brown (R) Michigan; James T. Broyhill (R) North Carolina.

Tim Lee Carter (R) Kentucky; James C. Cleveland (R) New York.

National Office Minutes

(Continued from page 21)

Equipment & Maintenance Co., Inc. to repair the cooling tower fan in the New Orleans Hall at a cost of \$551.00.

3. Pursuant to action taken by the National Council at its meeting of June 3, the National Office authorized all branches to place the following motions before the membership at the regular June 30 Membership Meetings:

- a. Wage increase for NMU Officers in line with that secured for the membership under the new Collective Bargaining Agreement.
- b. Increase in optical benefits under the NMU Officers Welfare Plan for Ophthalmologist services from present \$10 per covered individual per year to \$20; and for glasses from present \$20 per covered individual to \$35.

4. MSC to approve payment of recourse premiums of \$25.00 per year per Union Trustee on NMU Benefit Plans and one-half of such recourse premiums

for the Administrator and other fiduciary employees of NMU Benefit Plans. This is in accordance with the provisions of the Employee Retirement Income Security Act of 1974.

5. MSC to accept report of Vice President Bocker on the return of the SS American Racer to San Francisco after a four-month, five-day voyage which included participation in the Vietnam refugee sea-lift, for which the crew was commended. The crew was also formally commended for a rescue operation last year in the north Pacific during which 14 people were saved. The skipper of the vessel received the 1974 Seamanship Trophy for this feat.

6. The National Office approved a contribution of \$250.00 to the National Maritime Historical Society in connection with restoration of the Kaiulani.

MSC to adjourn.

Fraternally yours,
Mel Barisic
Secretary-Treasurer

CORRECTION

The second of the motion by the New Orleans Membership Meeting of April 28, 1975, was erroneously listed in the June (Page 13) as W. L. Jackson. brother's correct name is W. L. son, Bk. 69856.

APPENDIX A

Schedule of same or similar Facts or Allegations in Morrissey v. Curran, et al. and Dinko v. Wall et al.

AMENDED COMPLAINT

Morrissey v. Curran et al.

First Cause of Action

1. Court Jurisdiction
2. Description of N.M.U.
3. Plaintiff-N.M.U. members
5. Description of Joe Curran
6. Description of S. Wall
7. Description of Barisic, Miller, Martin, etc.
11. 1971 letter seeking accounting of N.M.U. funds
12. Plaintiff exhausted all internal remedies
13. No action taken by defense
14. Leave to commence
15. Under Title 29, Section 501 et seq., duties of officers
16. Defendants violated fiduciary duties
- 16a. Collusive contract with Perry

COMPLAINT

Dinko v. Wall et al.

First Cause of Action

1. Same
2. Same
3. Same
5. Same
4. Same
6. and 7. Same
9. 1974 letter
10. Same
11. Same
12. Same
13. Same
14. Same
15. Same
- 15g. Collusive contract with Breit, Olson, Raskin, Diamond, Spector,

- | | |
|--|--|
| 16h, 16o. Authorization of excessive and improper travel and personal expenses to officers and staff, and families | 15j. Travel and expense allowances |
| | 15l. Miscellaneous expenses out of slush fund of General Fund to officers and staff |
| 16k. Allowing payroll to be padded mainly in lieu of vacation pay | 15i. Allowing men to be appointed to more than one job to get more salaries |
| 16l. Unauthorized payments from General Fund of persons excluded from Officers' Fund by Court Order in 1972 | 15g. Unauthorized contract to staff to guarantee pension and severance from General Fund event of court's invalidating Union Pension Plan for staff |
| 16n. Permitting excessive payments of expenses as compensation in excess of fair compensation | 15k. Permitting excessive and improper salary increases |
| 18. Aforesaid acts not solely for benefit of N.M.U. and members, in violation of N.M.U. constitution, law, | 16. Same |
| 19. Officer engaged in such acts acted illegally, arbitrarily and without authority -- violating fiduciary duties | 17. Same |
| 20. Alleged illegal and collusive acts are designed to weaken and injure N.M.U. | 19. Same |
| 27. Plaintiff repeats and realleges as part of cause of action all mentioned allegations | 21. Same |
| 28, 30. Trustees of Officers' Pension Plan are stakeholders of excess payment made to them; and have been recipients of payments as trustees | 25. Same |
| 29. Defendants are agents or representatives with scope of Section 501 of Title 29 | 24. Same |
| 34. Amounts to be refunded to N.M.U. Treasury can only be determined by an accounting of defendant-trustees Karchmer, Segal, and Freedman | 26. Amount to be refunded to N.M.U. Treasury can only be determined by accounting of defendant-trustees Karchmer, Segal, Freedman and Amalgamated Bank |